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Situation of human rights in the Islamic Republic of Iran

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in the Islamic Republic of Iran, prepared by Maurice Copithorne, Special Representative of the Commission on Human Rights, in accordance with General Assembly resolution 53/158 of 9 February 1999 and Economic and Social Council decision 228 of 27 July 1999.

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Interim report on the situation of human rights in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights

Summary

In the period under review the Islamic Republic of Iran has seen more political and social turmoil than in recent years.

The President's commitments to change appear to be undiminished but the slow rate of implementation is leading to increasing scepticism.

The protection and promotion of human rights has had a central role in the recent turmoil, and the human rights of the participants and bystanders have been in jeopardy.

In particular, freedom of expression has suffered a setback in terms of the treatment in the media and perhaps peaceful demonstration as well.

Although there continues to be improvement in the condition of women as reflected by some social indicators, there is virtually no progress towards the improvement of their legal status.

The reform of the legal system remains a critical issue that has been on hold for some time.

Executions remain at an unacceptably high level, torture and similar treatment or punishment continue to exist and the prison system is facing unacceptable physical conditions.

The final report on a series of murders of intellectuals and political dissidents is still outstanding, which is contributing to widespread scepticism about the investigation.

The status of minorities and the Baha'is in particular remains unchanged.

Overall, while progress is undoubtedly being made in some areas, this is not the case in some of the most critical areas.

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I. Introduction

1. As the Special Representative has had occasion to observe in the past, capturing a dynamic complex society of 60 million people in a 32-page report is a considerable challenge. In the case of Iran, contradictions abound and crimes in society are if anything growing more pronounced each year.

2. Tension increased markedly in July and August 1999. The aftermath of a series of brutal murders of intellectuals and political dissidents that had occurred in November-December 1998 was still being played out. Efforts to consolidate freedom of expression were being challenged more vigorously, culminating in the closure of prominent reformist newspapers and the introduction of new repressive press legislation. These and other developments led in substantial part to the peaceful student-initiated demonstrations that subsequently turned violent.

3. These events were generally seen as the most serious challenge to the regime since the Islamic Revolution. They reflected the continuing struggle between those who want the society to move forward towards the vision articulated by the President and those who view that prospect as an unacceptable erosion of the Islamic verities on which the Islamic Republic was founded. For some, the central piece in the struggle is the reform of the legal system, that is to say, the search for a system that is less arbitrary, less driven by ideology, less cruel towards its dissidents and criminals; in short a system based on the rule of law built around respect for the personal dignity of all individuals. However, in the process, the rights of those engaged in the struggle as well as bystanders may be trampled on; this is certainly happening in the Islamic Republic.

4. While some progress in human rights is undoubtedly being made, this is not the case across the several critical scenarios still unfolding, particularly those concerning the perpetrators of the string of murders, and the treatment accorded to students and others in the aftermath of the demonstrations; the protection of human rights may well have suffered some significant erosion.

5. With regard to cooperation with the Commission on Human Rights, the Special Representative would note that the Government has not issued an invitation to him during the period under review and that he has not been able to visit Iran since February 1996. The invitation of the Government to the Working Group on Enforced or Involuntary Disappearances has not been taken up as of the date of preparation of this report.

II. The Special Representative's activities and sources

6. The Special Representative presented his fifth report (E/CN.4/1999/32) in April 1999 to the Commission on Human Rights at its fifty-fifth session. He returned to Geneva in May to hold consultations and participate in the sixth meeting of special rapporteurs, special representatives, experts and chairpersons of working groups of the Commission on Human Rights. He again returned to Geneva from 16 to 24 August 1998, to prepare the present report. On each of these occasions, the Special Representative met with senior officials of the Government of the Islamic Republic of Iran and staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and had other consultations.

7. In seeking to discharge his mandate, the Special Representative continues to draw from a wide range of information sources, including the Government of the Islamic Republic of Iran, other Governments, United Nations organizations, bodies and programmes, non-governmental organizations, individuals and media reports emanating from inside and outside the Islamic Republic of Iran. In Geneva, the Special Representative participated in an inter-agency informal consultation convened by OHCHR for discussion and exchange of information among various United Nations and other intergovernmental agencies about the human rights and humanitarian situations in the Islamic Republic.

8. During the period under review, the Special Representative received written communications from the following non-governmental organizations: About Iran; Amnesty International; Baha'i International Community; Committee for Defence of Liberty in Iran; Committee for the Defence of Prisoners in Iran; Committee to Protect Journalists; Constitutionalist Movement of Iran; Democratic Party of Iranian Kurdistan; Dr. Homa Darabi Foundation; Human Rights Watch; International PEN American Center; International PEN Writers in Prison Committee; Iranian Worker Left Unity; Organization for Defending Victims of Violence; National Council of Resistance of Iran; Reporters Sans Frontières; Society for the Defence of Political Prisoners in Iran; and Spectrum Institute.

III. Freedom of expression

A. The media

9. As noted by the Special Representative in earlier reports, freedom of expression is the field in which the issue of change has been most clearly joined. This continues to be the case. In brief, disciplinary action against newspapers, their directors and their journalists has risen sharply. In February 1999, Mohsen Kadivar, a prominent cleric and writer, well known for his liberal views, was arrested by the Clerics Court to face such charges as "confusing public opinion", on which he was subsequently convicted and sentenced to 18 months in jail. Kadivar had rejected the jurisdiction of the closed court and argued for a trial by jury in a public court. Kadivar's treatment was widely regarded as an attack on intellectual freedom, pluralistic politics and the rule of law. The minister responsible for the press described Kadivar's treatment as "the arrest of ideas and theories". In March the Clerics Court issued a decree that any newspaper even mentioning the name of the dissident Shia dignitary Ayatollah Montazeri would be subject to prosecution.

10. While new licences continued to be issued, newspapers and journals continued to be closed for various offences including being guilty of "lies" and of committing "counter-revolutionary acts". Over the period January to August 1999, some 40 publications appear to have had complaints filed against them. Many of the leading reformist papers have been closed and others have charges pending. The responsible minister himself survived an impeachment attempt in the Majlis for, it would seem, condoning if not promoting a liberal press environment.

11. One of several cases that attracted a great deal of attention in the period under review was that brought in the Clerics Court against the leading reformist newspaper *Salam*, and its director Mousavi Khoeiniha. The Court imposed a five-year ban on *Salam* and a three-year ban on Khoeiniha's participation in journalism. Khoeiniha still faces trial before a revolutionary court on other complaints. The minister responsible for the press subsequently distanced himself and the executive from the *Salam* judgements, regretting the closure of the newspaper and hoping that in future, no daily of that stature would be banned. Journalists employed by *Salam* and other newspapers now banned have since been summoned by various courts to answer complaints against them personally.

12. The role of the Press Supervision Board and the press jury continues to be the subject of controversy. One of the critical issues is the usurpation of the functions of the legislated press control system by the courts, including in particular the Clerics Court, a tribunal the Special Representative has in the past found to disregard the human rights of many of those brought before it. This development has been criticized by the minister whose ministry has legislated responsibility for the press.

13. The press control regime has not been without fault. It has on occasion acted capriciously and without regard to the requirements of fair trial. There have also been problems because of certain ambiguities in the law. In early July 1999, apparently purporting to address these ambiguities, the Majlis, reportedly without consulting the executive or the media, passed legislation that, among other things, permitted the suspension of publications before the prescribed legal process had been undergone, permitted a court to require the directors of publications to reveal their sources, required applicants for a licence to have "practical allegiance to the Constitution" and expanded the membership of the Press Supervision Board to include representatives of certain Islamic organizations and agencies. The amount of bail for press offences was also substantially increased. These changes were criticized by the government ministry concerned. In August, a second piece of legislation was announced, also apparently drafted without consultation with those most concerned. This legislation purported to address the need for a definition of a "political offence", but is said to be so widely drawn as to threaten free comment not only on political matters but on social and economic ones as well. The Special Representative considers that passage of these two pieces of new legislation, both apparently opposed by those most concerned, would constitute a major defeat for the right of free expression in Iran.

B. Student protests

14. Without doubt the most significant political and social event during the period under review was the series of student demonstrations in early July 1999. Their cause, their character and their implications are still being discussed. In human rights terms, they can be viewed through the optics of freedom of expression, of association and of assembly, as well of course as those of the person in cases of death, injury or arrest. The Special Representative chooses to position the demonstrations, in the first instance at least, as the right to free expression and to peaceable demonstration through the rights of assembly and association.

15. While student activism had been building for some months, the critical sequence of events took place in the

period 7-14 July, with the fall-out continuing at the time of writing this report. They have been described by many commentators inside and outside of Iran as the most serious challenge the Government has faced since the early days of the Islamic Revolution. Where Governments feel threatened, the protection of human rights is usually on the line. This case is no exception.

16. The Special Representative has attempted to establish a chronology of the events, particularly as they might have a bearing on human rights; it is attached as annex I. The Government launched separate enquiries into each of the three phases of the events: on 8 and 9 July on the campus of the University of Tehran; the student demonstrations on 9, 10 and 11 July; and the broader demonstrations on 12 and 13 July. Only the report on the first phase was available as the present report was being prepared.

17. In grossly simplified terms, on 8 July some students held a small rally at the university apparently to protest the passage by the Majlis of the press legislation mentioned above and the closure of a popular newspaper, *Salam*. Early in the morning of 9 July, the security forces and "civilian elements", widely assumed to be the extra-legal Ansari-Hezbollah, attacked the student dormitories causing a great deal of damage and some injuries and arresting some students. On 10 July a large number of students held a demonstration which moved into the streets of Tehran, with discontent now focusing on the raid on the student dormitories. The demonstrations continued on 11 July. Meanwhile, the Government expressed its grave concern over the raid, undertook to reimburse the students for damage suffered and suspended the senior police officers concerned. The Minister of Higher Education and the President of the university resigned. The demonstrations continued on 12 and 13 July. With many non-students now joining in, the demonstration turned violent. The political demands of the demonstrators broadened beyond the incident of 9 July. The Government vowed to restore order and a large pro-Government rally was organized for 14 July. This was the end of the demonstrations.

18. Almost immediately, concern began to be expressed for those detained by the security forces and over allegations that arrests were continuing, including of persons connected to the Iran Nation Party. At least one detained student leader appeared on television to confess his role in the disturbances and to having been in contact with foreign elements. At one point, the Government announced that, contrary to rumours, some 1,200 persons had been detained, of whom some 700 had already been released. However, other activists and journalists disappeared; they too were presumed to have been detained. The Special Representative and his colleagues made a number of urgent appeals about the situation (see annex III, paras. 5, 7 and 8).

19. The atmosphere remains intimidating. State television has broadcast videotaped confessions of activists, accused of being "counter-revolutionaries", Ministry of Information (i.e. Intelligence) lists of those arrested openly state them to be guilty, and the head of the Tehran Revolutionary Court declared that it would move against persons whose statements had "incited" or "fomented" recent events.

20. The protests provided a major challenge to the President's promise of diversity and freedom of expression within the rule of law. The attack on the student dormitories was a clear violation of the human rights of the students, as well as apparently being a violation of Iranian law. The Government has taken disciplinary steps against some of the senior officers concerned, but at the time of writing, not yet against the notorious "civilian elements", whom it accuses of "exerting immense pressure" upon the police. The first days of demonstrations that followed appeared to have been peaceable enough but later the presence of outside elements and the police response led to violence, injuries and the destruction of public property. The challenge for the authorities is to distinguish between peaceable protest and violent confrontation, and to punish only those involved in the latter. At the time of writing, the signs are that despite the initial tolerance towards the students, the authorities are casting their net very widely to include some student leaders and members of the Iran Nation Party (see annex III, para. 8).

IV. The status of women

21. The period under review passed without much substantive change in the status of women in the Islamic Republic. The President and various senior figures in the executive continue to press for a change in attitude towards women and women's issues, noting again that the existing limitations are variously legal, economic and social in nature. It was again declared by some of these figures that some of the relevant Islamic laws were "subject to adaptation and change due to circumstances".

22. The current emphasis appears to be on the formation of civil and non-governmental organizations for women and, more specifically, on a national action plan to address violence against women. According to the press, the President's Advisor on Women's Affairs declared in May 1999 that "one cannot claim that violence against women did not take place in Iran". The Special Representative reported

on the draft plan in his 1999 report to the Commission on Human Rights (E/CN.4/1999/32, para. 32). In the period under review it was announced that the plan now contemplates legal and judicial measures, a public information campaign, and the establishment of a women's police college and an organization for defending women in peril as well as victims of violence.

23. More generally, a number of relevant statistics continue to improve. In the recent local elections, 300 women were elected and 114 of these received the highest or second highest number of votes in their constituencies. There are reportedly now some 70 daily and periodic publications which, generally or specifically, address women's issues, most of them run by women editors and managers. In higher education there have been some notable developments. Government officials have stated that female students enrolling in university in 1998 outnumbered male students. About 30 per cent of university faculty members are women. The proportion of female graduate students, and of women doctors and health-care workers is growing significantly.

24. The Special Representative's attention has been drawn to an important recent report by UNICEF entitled *The State of Women: Islamic Republic of Iran* (ISBN 964-6513-10-7). It focuses in substantial part on the areas of compatibility and of divergence between the Convention on the Elimination of All Forms of Discrimination against Women and Iranian law. This report merits careful study; for the moment, however, the Special Representative wishes to highlight two situations that are singled out in the report.

25. The first of these concerns early marriage. The Government, by becoming a party to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, committed itself not to allow the marriage of a minor even with the permission of a guardian, usually a father or a grandfather, a practice now permitted by article 1041 of the Civil Code. Given that the minimum age of marriage of girls is only nine years, very young girls can be married off in this manner, a clear violation of their rights as children. Although the Special Representative is informed that no girls are married off at the age of nine or younger, the law remains on the books.

26. The report also addresses the problems faced by Iranian women marrying refugees, most commonly Afghan refugees. According to the report, for the marriage to be registered, the foreign husband must have a valid passport and legal residence permit which, in practice, few Afghan refugees have. As a result of poverty and the young age of the women, and the fact that they often face brutality, such marriages are often unstable and the women are frequently deserted. Children of such marriages cannot be registered as the marriage itself is not registered. The UNICEF report concludes that as the woman has in effect had foreign nationality imposed upon her, she is being denied her rights under the Iranian Constitution which states, in particular, that "the Government cannot deprive any of this right unless upon his/her request or, if the citizenship of another country is adopted by him/her". The Special Representative calls upon the Government to address both these denials of human rights with the compassion and urgency that the situations clearly merit.

27. In general, it remains the Special Representative's view, as he has expressed in the past, that the Government, while showing some leadership, is not addressing the removal of those discriminatory laws and practices which remain the cause of the unequal treatment faced by women in Iran.

V. Legal subjects

A. The legal system

28. In a previous report to the General Assembly (A/53/423), the Special Representative noted that several events had engendered an intense public debate about the conduct of trials and the appropriate role of judges. This in turn had led to the widespread view that a major overhaul of the judicial system was a prerequisite for the establishment of civil society in the Islamic Republic. In August 1998, the Iranian Prosecutor General told the Special Representative of reforms that were planned including legislation that was to go to the Majlis shortly. Such reform measures have been slow in appearing.

29. The need for change in the way legislation is prepared was highlighted during the period under review by two cases already mentioned in the section on freedom of expression (para. 9 above). These are the repressive laws passed in June amending the Press Law, and the draft law introduced in August on political offences. Both of these bills were apparently prepared more or less in secret without input from the relevant offices of the executive, from interest groups or from the public. While this process is carried out by elected representatives of the people, in the Special Representative's view it is hardly a participatory or even democratic law-making process. It should not be surprising that such laws are met with strong opposition by those concerned and sometimes by a broad swath of the Iranian public. At the

least, this approach leads to cynicism about legislators and their legislation, and towards the rule of law more generally.

30. The Special Representative would note a recent effort to legitimate the Clerics Court which comes at a time of increasing criticism of its activities, particularly in press matters. It has been brought to the attention of the Special Representative that in the course of a recent debate on the Revolutionary and Public Court Procedure Act, the Majlis added article 511A which appears to legitimate the Clerics Court through an amendment to legislation otherwise concerned with court procedure (Official Journal 15816, pp. 28-30). It is very difficult to argue, as judicial officials appear to be doing, that although this Court was properly constituted in the first place, this new legislative provision is still needed. The Special Representative's position remains as stated most recently in his report to the Commission (E/CN.4/1999/32, paras. 48-53), that this Court's existence is a standing invitation for the violation of the human rights of those brought before it.

31. The crisis in the prison system seems to be worsening. More reports are reaching the Special Representative about overcrowding, prisoner unrest and appeals from local prison officials that judges avoid imposing jail sentences. Reportedly, only 2.5 square metres are available for each prisoner.

32. The Special Representative would again note the President's recent calls for the establishment of the rule of law in Iran. Certainly, such a development is central to the enjoyment of human rights in the country. Also certainly, little to this end has been achieved to date. Very recently the new head of the judiciary announced that there would be "a dramatic change in the culture prevailing in the judiciary system". The Special Representative looks forward to describing in his next report the introduction of concrete reform measures.

33. The concept of fair trial in Iran came to international attention during the period under review following the arrest of 13 Jews from Shiraz and Isfahan on suspicion of spying for Israel. The Government of Iran issued a statement declaring that "all arrested suspects will receive a fair trial in accordance with due process of law". The Special Representative followed up this statement with an urgent representation addressed to the Government noting the most significant elements of "fair trial" and seeking assurances that they would indeed be accorded to those 13 individuals. The chair of the Jewish Central Committee appears to have played a significant intermediary role in this matter. At the time of the preparation of the present report, no final decision had been taken by the Iranian judiciary in this matter.

B. Executions

34. According to information received by the Special Representative, Iranian media and Tehran-based foreign wire services reported 138 executions from 1 January 1999 to mid-August 1999. In his report to the General Assembly at its fifty-third session, the Special Representative noted that the Iranian authorities had agreed to cooperate with him in the provision of official statistics on the number of executions. No such statistics have yet reached the Special Representative's attention. The crimes for which most of the executions were carried out are unknown, although a number of those put to death were said to be supporters of or activists in the illegal opposition Mojahedin Khalq Organization.

35. One of the offences that rarely attract the death sentence is "major economic crimes". In March 1999, the Tehran press reported that four merchants had been sentenced to death for exporting carpets without declaring their real value.

C. Torture, or cruel, inhuman or degrading treatment or punishment

36. In the period under review, there occurred to the knowledge of the Special Representative, the first trial of an official for engaging in torture, an act prohibited by the Constitution of Iran. The Commander of the Intelligence and Security Division of the Tehran police, along with three co-defendants, was charged following complaints by a group of mayors and senior officials of Tehran Municipality over treatment they had received while in detention on charges of corruption in 1998. The case was heard by a military court in closed session. While the Commander was found guilty of only minor charges, the fact that the charge was brought at all reflects the more realistic approach that is gradually beginning to take hold in Iran to this abhorrent practice.

37. According to Iranian press reports coming to the attention of the Special Representative, there continue to be amputations of arms, hands and most commonly fingers, usually following multiple theft convictions.

38. Press accounts suggest that corporal punishment is prevalent. In January 1999, an Iranian newspaper reported that two 15-year-old boys had been sentenced to a flogging

for "offending public democracy" by dressing up as girls and wearing make-up. They explained to the Court that they did this to "extract money from rich young men". In June an Iranian newspaper reported that a young man in Mashad had been given 20 lashes for "wounding public moral sentiments" by plucking his eyebrows and wearing eyeshadow. In March an Iranian newspaper reported that six persons had been sentenced in Mashad to 18 months in jail and 228 lashes for goading passers-by to dance in the street in the traditional Zoroastrian festival of Chaharshanbe-Souri.

D. Political murders and disappearances

39. In his 1999 report to the Commission on Human Rights, the Special Representative reported on a series of murders and disappearances of prominent intellectual and political figures. These tragic events had the earmarks of an organized campaign and aroused great public concern. The investigation was put in the hands of the Military Prosecutor's office on the grounds that, as was soon acknowledged, a number of officials in the Ministry of Information (i.e. Intelligence) were involved. The Government committed itself to an open trial of those that would be charged. On 12 May 1999 a newspaper carried a statement by 325 political and cultural figures on the occasion of the 170th day after the murder of Daryoush and Parvaneh Forouhar reiterating a call for justice and disclosure of the perpetrators' identity.

40. The investigation dragged on into June, when the Chief Military Prosecutor, Mohammad Niazi made public his preliminary report on the matter. The names of the four "main agents" were identified, one of whom had been able to commit suicide while in custody. Twenty-three persons had been arrested in connection with these killings — some of whom had been released on bail — and 33 others summoned for investigation. Some of the accused were from the intelligence forces, while others were businessmen. Niazi declared that the motive for the killings had been "to face the system with problems at the international and domestic scene", to generate "a fratricidal conflict between political factions".

41. The report, coming five months after the investigation was announced, was greeted with scepticism in some quarters particularly as to the circumstances of the alleged suicide. Rumours persisted that some of those released on bail had been able to leave the country and that the individuals concerned had been acting with the knowledge if not the approval of powerful personages. Reference was frequently made to the leader of the group's apparently close relations with certain Iranian leaders, and to the nature of the memorial services that were held after his suicide in custody, as well as his burial in a section of the cemetery reportedly designated for national martyrs.

42. In early August, the recently retired head of the judiciary was quoted in the press as saying he had ordered "a public and transparent trial" for those being indicted.

43. The Special Representative, for his part, again urges the Government of Iran to expedite this investigation and to bring the accused to trial quickly. The rule of law repeatedly declared to be an objective of President Khatami's administration requires no less. A dark stain on the Government and the legal authorities will only be removed by a more expeditious and forthright approach to this enquiry.

44. The case of the dissident writer/editor Pirouz Davani who disappeared in August 1998 is no closer to solution following the denial of the Information (i.e. Intelligence) Ministry that he had been arrested. Further investigation is required of this highly suspicious disappearance (see annex III, para. 9).

VI. The status of minorities

The Baha'is

45. The overall enjoyment of human rights by the Baha'i community remains of serious concern. There continue to be reports of violations of rights — in particular those of freedom of assembly, association, expression, movement, liberty and security of the person. The Baha'i community continues to face a systematic violation of economic, social and cultural rights.

46. Fifteen Baha'is are imprisoned in Iran, of whom seven are under sentence of death. The four Baha'is arrested in October 1998 in Isfahan in connection with their activities with the Baha'i Institute of Higher Education (BIHE) were sentenced in March 1999 to various prison terms without parole (see annex II).

47. The Baha'i community is denied the right to exercise its religion and to maintain administrative institutions. Activities aimed at providing education to Baha'i children continue to be curtailed and access to employment denied. Unemployment benefits are reportedly not paid to Baha'is, and their pensions can be terminated on religious grounds. Confiscation of Baha'i property continues.

48. The Special Representative once again urges the Government of the Islamic Republic of Iran to improve its

treatment of the Baha'i community and, specifically, to ensure that the death penalty is not imposed on Baha'is for their religious beliefs; to lift the ban on Baha'i organizations so that Baha'is may associate freely; to put an end to discrimination against Baha'is in all spheres of public life and services; to effect the return of confiscated personal and community Baha'i property; to institute the reconstruction of destroyed places of worship wherever possible or, at a minimum, ensure the provision of appropriate compensation to the Baha'i community; to lift restrictions regarding the burial and honouring of the dead; and to eliminate from passport application forms questions concerning religion, so as to avoid undue infringements of freedom of movement.

49. The Special Representative again urges the Government of the Islamic Republic of Iran to implement the outstanding recommendations of the Special Rapporteur on religious intolerance (see E/CN.4/1996/95/Add.2).

VII. Other important matters

A. The Islamic Human Rights Commission

50. In a previous report to the General Assembly (A/53/423, paras. 47-49), the Special Representative commented on this Commission and in particular, on the need for it to take certain steps to establish its credibility as a national human rights institution. The following new information published by the Commission has now come to the Special Representative's attention:

> In the period from March 1998 to March 1999, 1,051 files were opened on the basis of complaints received.
>
> Of these, the most prominent respondent, the object of 394 complaints, was "the Judicial authorities".
>
> Of the total of some 3,000 currently active files, some 1,000 related to women and women's issues.

51. The Special Representative again recommends that the statistics in the reports of the Commission be broken down further and that, as he recommended, positive trends and best practices be publicized, and that a national action plan for human rights be developed.

B. Terrorism

52. During the period under review, the Government and a banned opposition group, the Mojahedin Khalq Organization, traded charges of terrorist activities both within and outside the country. Such attacks, on government officials and on members of the opposition, appear to have increased recently with senior government officials and military figures being targeted on one side, and groups of opposition members on the other, in at least one case on a loaded bus in Iraq. On one such occasion, the United Nations Secretary-General made a declaration condemning all forms of violence. A number of Governments expressed a similar point of view. More generally, the Commission on Human Rights has in the past expressed its serious concern over the gross violation of human rights that is inherent in terrorist acts.

53. While efforts have been made to distinguish the nature of such acts, for his part the Special Representative also holds the view that violence from any source and in the name of any cause, however noble that cause may be in its own right, is unjustifiable and an unacceptable violation of the human rights of the victims.

54. In May 1999, the Chief Military Prosecutor announced the arrest of 13 members of a fundamentalist assassination group "Mahdaviyat". Its targets were said to include Sunni clerics and former President Rafsanjani, among others. The leader of the group was charged with the attack in January 1999 on the head of the Tehran judiciary that resulted in one death and severe injury to the head of the judiciary.

55. In February 1999, the brother of the Supreme Leader was attacked and severely injured. He reportedly serves as a press adviser to the President and runs a reformist newspaper.

C. Democracy

56. In February 1999, the Islamic Republic had its first elections at the local government level, thereby fulfilling a neglected provision of the Constitution. Government reports stated that about 280,000 candidates competed for 130,000 council seats and that there was a 70 per cent turn-out of voters.

57. In Tehran, there was a controversy over the qualifications of five reformist candidates, all of whom went on to win seats. One of these was Abdollah Nouri, a former Interior Minister who topped the Tehran polls.

58. The next step in what President Khatami describes as the "institutionalization of Islamic democracy" is the election for the 6th Majlis reportedly set for 18 February 2000. Public discussion of this important event has begun and, once again, the role of the Council of Guardians in approving the candidates is a central issue. Most commentators believe that a new law on the subject will not

seriously impede the Council of Guardians from making its decisions on the basis of ideology rather than existing legal requirements for candidature.

59. The Minister of the Interior, for his part, warned his officials that their role is to ensure the conduct of fair elections and that they are not to evaluate individuals on the basis of prevailing beliefs and preferences.

VIII. Correspondence between the Government of the Islamic Republic of Iran and the Special Representative during the period January-August 1999

60. The correspondence exchanged during the reporting period between the Special Representative and the Permanent Representative of the Islamic Republic of Iran to the United Nations Office at Geneva is described in annex III. In sum, the Special Representative transmitted to the Government five communications, including two jointly with other special rapporteurs of the Commission on Human Rights. During the same period, the Special Representative received responses from the Government to three out of six communications that were described in his previous report (see E/CN.4/1999/32, annex V).

61. Some of the correspondence concerned requests for information about individual allegations. Also during the reporting period, the Special Representative sent urgent communications, jointly with other special rapporteurs, in which he appealed to the Government to ensure that those affected benefited fully from all the internationally recognized safeguards, particularly those provided for in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

62. While acknowledging the responses by the Government, the Special Representative encourages it to make additional effort to respond to his outstanding requests for information concerning individual cases.

IX. Conclusions

63. It is clear that freedom of expression with regard to the media has suffered a serious setback as a result of a hostile campaign mounted against the reformist press in particular, the usurpation of the legislated press control system by the courts, and the introduction of repressive legislation. Freedom of expression, as well as the rights of association and assembly may have suffered in the aftermath of the student demonstrations, depending on the treatment accorded to the students and to other participants.

64. There has been little substantive change with regard to the rights of women in the period under review. The Special Representative again calls upon the Government to take the lead in introducing change in law and in practice affecting the status of women.

65. In order to achieve the rule of law and therefore the protection of human rights, the reform of the legal system remains an urgent matter. The Special Representative recommends that the hinted at reform measures be introduced as soon as possible. The Government should publish statistics on executions by category of offence and should ensure compliance with resolutions of the Commission on Human Rights in this regard. Torture and comparable treatment or punishment continues to exist and needs to be confronted by the Government in accordance not only with international standards but with the laws of Iran.

66. The investigation of the string of murders of intellectuals and political dissidents that occurred in November and December 1998 needs to be completed quickly and with total frankness if it is to have public credibility.

67. The status of religious minorities remains precarious. The Government should address without further delay the matter of the Baha'is, in line with the outstanding recommendations of the Special Rapporteur on religious intolerance.

68. Terrorism by Iranians against Iranians is on the rise both within and outside of Iran. The Special Representative calls on both sides to heed the calls from the Secretary-General of the United Nations and others in this regard.

69. There continues to be progress in the development of democracy in the Islamic Republic; the arrangements made to ensure open and fair elections for the sixth Majlis will be critical in this regard.

Annex I

Chronology of student demonstrations

The following chronology is drawn from Iranian and foreign wire service reports on the events of 7 to 14 July 1999. It may contain inaccuracies. Numbers of demonstrators, those killed or injured, and those arrested, are not given as the press reports vary widely in this regard and no independent sources are available.

7 July — The Majlis passes a bill tightening controls on the press.

Salam, a leading reformist newspaper, is shut down by order of the Clerics Court.

8 July — A group of University of Tehran students stage a sit-in protesting the two events of 7 July.

9 July — In the early morning, security forces, accompanied by civilians widely believed to be the extra-legal Ansari Hezbollah, enter the University of Tehran without authorization and ransack the student dormitories, injuring some students and arresting others.

10 July — Students demonstrate in the streets.

The Minister of Higher Education hands in his resignation, but it is refused.

Demonstrations spread to other cities, particularly Tabriz.

11 July — Generally peaceful demonstrations continue in Tehran streets. The demands of the demonstrators broaden to include the system of governance in the Islamic Republic.

Two senior security officials are dismissed over the raid on the student dormitories.

The Minister of the Interior describes the event of 9 July as "one of the most bitter social, political and cultural events of recent times". He had visited the university on 9 July and "could not believe what he saw", including "the scale of destruction" and the actions of "the wilful and disobedient elements who are known as pressure groups in the society". He declares that action has to be taken "to confront the elements which caused the catastrophe including punishing a number of the attackers and sacking two of the law enforcement commanders".

The President of the University of Tehran tenders his resignation.

12 July — There are further demonstrations in Tehran and clashes with the police, leading to some arrests.

A large sit-in takes place in the university.

University faculty issue a statement that the 9 July incident "was the worst of its kind in University history".

Police and vigilantes attempt to take back control of the streets, particularly in the area around the university.

The Supreme Leader describes the occurrence of 9 July as "a bitter and unacceptable incident".

The Governor of Tehran bans all demonstrations.

At Tabriz University a student demonstration is broken up by force, resulting in injuries and arrests. At another university, following a student sit-in, the university is closed until October. The violence used in Tabriz and particularly the use of firearms by the police is only subsequently realized.

13 July — Tehran riot police disperse a large group of demonstrators, some of whom regroup and engage in vandalism. Arrests ensue.

President Khatami calls the incident on 9 July "extremely bitter and intolerable", adding that student protestors had now been joined by agitators "with bad intentions".

Mainstream student leaders begin to distance themselves from the rioting of the previous two days.

14 July — A large counterdemonstration is held in Tehran.

	The Secretary of the Supreme National Security Council warns that those involved in the past few days' riots, destruction of public property and attacks against the system would be tried and punished in the same way as those fighting God and those spreading corruption, charges which usually carry the death penalty.
	In a separate speech to students at the University of Tehran, the Secretary declared that the role of students was highly valued and that compensation would be paid for the destruction in the university dormitories.
17 July	Student groups protest the continuing arrest of students by police and "pressure groups".
	Reports are published that students in some parts of the country are being brought before the Revolutionary Courts.
22 July	Student groups protest the continuing arrest of students.
4 August	The director of the university dormitories complains to a visiting group of members of the Majlis that the facts of the raid on the dormitories are not in dispute and yet no action has been taken by security officials. Instead, more students are being arrested.

Annex II

Information on the situation of the Baha'is

1. The following is based on information received by the Special Representative.

2. With regard to imprisonment of Iranian Baha'is, the four Baha'is arrested in Isfahan in October 1998 for their involvement with the Baha'i Institute of Higher Education (BIHE) received verdicts on 16 March 1999. Dr. Sina Hakiman was handed down a fixed prison term of 10 years, Mr. Farrad Khajeh and Habibullah Ferdosian were given seven years and Mr. Ziaullah Mirzapanah was sentenced to three years (all without parole). It may be noted that one of the prisoners, Mr. Mirzapanah, had been released in January 1999 but was called to attend the trial of the other three individuals, at which time he was also sentenced. The verdict (No. 2/791/787) stated generally: "a number of people of the misled Baha'i sect have formed an illegal group under the title "the Friends of Iran, Isfahan", have taken action to establish a secret organization named Hay'at-i-Maarif-i-Ali-Amri' [Institute for Higher Baha'i Studies] and are engaged in attracting youth, teaching against Islam and against the regime of the Islamic Republic".

3. Mr. Manuchehr Khulusi, a resident of Khurasan, was reportedly arrested on 9 June 1999 while on a visit to Birjand. He was subsequently transferred to Mashhad where he is being held in the Information Organization prison. While reports indicate that he was arrested because of his Baha'i activities, no indications have been given as to the charges brought against him or when his trial may be expected.

4. Other Baha'is held in Iranian prisons include Mr. Bihnam Mithaqi and Mr. Kayvan Khalajabadi, arrested on 29 April 1989 for Zionist Baha'i activities; Mr. Musa Talibi, arrested on 7 June 1994, charged with apostasy and sentenced to death; Mr. Dhabihu'llah Mahrami, arrested on 6 September 1995, charged with apostasy and sentenced to death; Mr. Mansur Haddadan, arrested on 29 February 1996, charged with organizing a children's art exposition and sentenced to three years in prison; Mr. Sirus Dhabihi-Muqaddam, Mr. Hidayat Kashifi Najafabadih and Mr. Ata'u'llah Hamid Nasirizadih, arrested in October/November 1997, charged with continuing "Family Life" meetings and sentenced to death; Mrs. Sonia Ahmadi and Mr. Manuchehr Ziyai, arrested on 1 May 1998, charged with holding meetings for youth and sentenced to three years' imprisonment. Reports further indicate that limitations have been placed on visits to several of those prisoners held in Tehran, including the necessity for wives to present proof of marriage in order to visit their husbands, which is complicated by the Iranian authorities' non-recognition of Baha'i marriages.

5. Mr. Arman Damishqi and Mr. Kurush Dhabihi, referred to in the Special Representative's report to the Commission, were granted amnesty and released on 19 March 1999. They were reportedly arrested early in 1996 for having refused to renounce their faith.

6. Naser Qadiri, first arrested on 29 July 1997 (then released and rearrested for refusing to desist from holding "Family Life" meetings), has been released a second time after serving 21 months in prison.

Annex III

Correspondence between the Special Representative and the Government of the Islamic Republic of Iran during the period January-August 1999

1. On 22 January 1999, the Special Representative sent a letter once again requesting the urgent attention of the Government of Iran to additional reports he had received on the deteriorating situation of Mr. Amir-Entezam, a deputy prime minister under the transitional Government in 1979 and 1980 (see E/CN.4/1999/32, annex V, para. 3). The Special Representative remains deeply concerned about the health of Mr. Amir-Entezam, about the way he is being treated generally in prison and about his continuing detention. No response has been received yet from the Government to either of the communications on this matter.

2. By letter dated 21 June 1999, the Special Representative drew the urgent attention of the Iranian authorities to the reported arrest in the Islamic Republic of 13 persons, all said to be Iranian Jews suspected of spying for Israel. While referring to international norms and standards with regard to fair trial, the Special Representative noted with concern the lengthy period the investigation of this matter had apparently taken and the assertion he had received that during this period the accused persons had been denied, among other things, family visits. Referring to the Government's statement No. 179 of 14 June 1999 on this matter, the Special Representative requested assurances that in receiving the fair trial to which the Government has committed itself, the accused will be accorded their rights in accordance with international human rights norms, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly in resolution 43/173 of 9 December 1988. No response has been received.

3. The Special Representative joined the Special Rapporteurs on the question of torture, and on the promotion and protection of the right to freedom of opinion and expression, in sending an urgent letter on 12 July 1999 to the Minister for Foreign Affairs concerning the arrest and detention of Hechmatollah Tabarzadi and Hossein Kachani, both journalists of the weekly publication, the *Hovizat-Ú-Khich*, which had since reportedly been banned. According to the information received, the authorities have indicated that the two journalists were arrested for publishing information "contrary to public order and public interest" and "issuing an anti-establishment communiqué". On 6 July 1999, a number of students and other persons reportedly protesting the detention of the above-mentioned individuals at the United Nations office in Tehran were themselves arrested. It was said that all of these individuals have been denied access to a lawyer. In view of the incommunicado nature of their detention, fears have been expressed that the above-mentioned individuals may be at risk of torture and other forms of ill-treatment.

4. In the above-mentioned letter, reference was also made to the suspension by the Government of the *Salam* newspaper on the same day that the Majlis passed a new law which in principle restricts freedom of the press. The *Salam* night editor, Morad Raisi (Veissi), was reportedly detained on 7 July 1999. In the letter, a joint appeal was made to the Government to ensure everyone's right to freedom of opinion and expression, and that the right to physical and mental integrity of the above-named persons is protected in accordance with international human rights law. No response has been received from the Government.

5. On 13 July 1999, the Special Representative, in conjunction with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, addressed a letter to the Minister for Foreign Affairs concerning the alleged attacks by armed forces and members of the vigilante group, Ansarie Hezbollah, against student demonstrators denouncing the closure of the daily newspaper, *Salam*. In this regard, concern was expressed about the reported deaths of four students, Na'imi, Sohrabian, Yavari and Zakeri, and the detention of student activists Mohamad Masud Salamati, Sayed Javad Emami and Parviz Safaria. The Government was requested to guarantee the safety and security of the students and to ensure that their right to the freedom of opinion and expression is protected as set forth in articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

6. In a letter addressed on 30 July 1999 to the Minister for Foreign Affairs, the Special Representative referred to reportedly official figures, according to which a total of 1,200 persons have been arrested since the beginning of the student demonstrations, 750 of whom are said to have been released. On the same occasion, the Special Representative forwarded the names of a significant number of missing persons that had been brought to his attention. The Special

Representative was particularly concerned that so many persons, some of whom reportedly had nothing to do with the latter days of demonstrations, may remain in detention without recourse to family or lawyers.

7. The above-mentioned letter also referred to communications by the Special Representative dated 18 September 1998 and 22 January 1999 regarding the insufficient medical attention provided to Mr. Amir-Entezam (see para. 1 above). Expressing deep concern about the continued detention of Mr. Amir-Entezam and his wife, Mrs. Elahe Mizani Amir-Entezam, both without apparent cause, the Special Representative observed that no response had been received from the Government to his above-mentioned communications on this case. Since then, the Special Representative has been told that Ms. Elahe Mizani Amir-Entezam has been released.

8. A letter dated 1 March 1999 from the Permanent Representative of the Islamic Republic of Iran in Geneva contained the following information in response to the Special Representative's letter dated 14 December 1998 concerning the continued detention of four members of the Baha'i Community (see E/CN.4/1999/32, annex V, para. 7):

> "I would like to provide you with the following information received from relevant authorities.
>
> Mr. Ziaollah Mirzapanah was arrested in Isfahan on charges of illegally establishing organizations and holding illegal gatherings.
>
> While in detention he complained about his illness. He was examined by a physician who recognized that the defendant is suffering from prostate enlargement and kidney complications.
>
> The court considering the report of the physician and the age of the defendant ordered his release on bail till commencement of his trial.
>
> As for other individuals mentioned in your letter, it would be highly appreciated if further detailed information, including complete first name, surname, ID number, place of arrest, etc. were provided in order to enable the authorities to make inquiries into the case."

9. In response to a joint communication of 4 November 1998 from the Special Representative and the Chairman of the Working Group on Enforced or Involuntary Disappearances concerning the fate and whereabouts of Pirooz Faghaei Davani, a political activist (see E/CN.4/1999/32, annex V, para. 6), the Permanent Representative forwarded the following information:

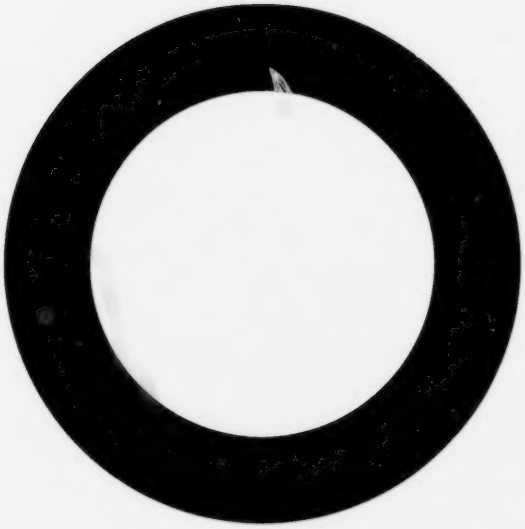
> "I should inform you that the relevant organizations and authorities have not yet found any trace of Mr. Pirooz Faghaei Davani. The case is still under consideration and any result would be communicated to you as soon as possible."

10. Further to his response dated 7 October 1998 with regard to the death sentences against Sirus Zabihi-Muqaddam and Hedayat Kashefi Najafabadi, both members of the Baha'i faith (see E/CN.4/1999/32, annex V, paras. 4 and 5), the Permanent Representative, by a letter dated 28 May 1999, informed the Special Representative of the following:

> "I would like to provide you with the following information received from relevant authorities in Tehran.
>
> The Supreme Court, in compliance with due process of law reviewed the death sentence for Messrs. Zabihi Moghadam and Hedayat Kashifi. After the review, the Supreme Court decided to reject the verdict of capital punishment for the defendants and sent their cases to another competent court for retrial."

11. By letters dated 6, 27 and 29 January, 3, 17 and 24 February, 11 March, 3 May, 2 and 21 June, and 5, 12, 14, 19 and 22 July 1999, the Permanent Representative provided the Special Representative with the text of several articles on various subjects published in Iranian press and international wire services.

12. By a letter dated 2 February 1999 the Permanent Representative forwarded to the Special Representative the text of press releases issued by the Permanent Mission of Iran in Geneva with regard to "Election of local councils throughout Iran" and "President Khatami's views on the upcoming elections of local councils".



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Situation of human rights in Haiti

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report, accompanied by recommendations, on the situation of human rights in Haiti, prepared by Adama Dieng, independent expert, in accordance with Economic and Social Council decision 1999/248 dated 27 July 1999.

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I. Introduction

1. In presenting his report to the General Assembly at its fifty-third session (A/53/355, annex), the independent expert emphasized the threats to the stability of the country resulting from the prolonged absence of a Prime Minister and a government. He also stressed that the greatest challenge faced by Haiti is to build a State ruled by law through the establishment of a modern, effective, independent, democratic and equitable judicial system that is available to all. Other major concerns were the question of the withdrawal of the United Nations Civilian Police Mission in Haiti (MIPONUH), the activities of the National Police, combating impunity, and the situation with regard to women's rights and the rights of the child. Three months later, there was an outbreak of violence in Port-au-Prince. In view of that situation, on 29 January 1999 the independent expert appealed to the Haitian political actors and civil society to resolve the crisis.

2. He likewise deplored the institutional void created by President René Préval's "declaration" that the mandate of Parliament had expired. The climate of insecurity was also emphasized by Haitian non-governmental organizations (NGOs), opposition leaders and various United Nations agencies. In view of the seriousness of the situation, which was aggravated by the murder of Senator Jean-Yvon Toussaint, the independent expert decided to visit Haiti from 11 to 20 March 1999. During his visit, he had meetings with the President, Prime Minister Jacques-Édouard Alexis, the President of the Senate, the Special Representative of the Secretary-General for Haiti and the head of MIPONUH, the Minister of Justice, the judicial and police authorities, the leaders of political parties, the International Civilian Mission in Haiti (MICIVIH), human rights NGOs, women's organizations and donors. He likewise visited the National Penitentiary in Port-au-Prince and a number of police stations.

3. With regard to collective freedoms, the independent expert was pleased to note that there is no interference with freedom of the press, freedom of assembly, freedom to demonstrate, the right to strike, freedom of association and so on. He forcefully condemned the attack on President Préval's sister and special assistant, Marie-Claude Calvin Préval, which took place two days after the President's "declaration" that the mandate of the forty-sixth legislature had expired. Madame Calvin Préval was seriously wounded in the attack and her driver was killed. The independent expert was nevertheless glad that, on the whole, the situation was handled with great sang-froid, but called upon all concerned to strive to create conditions conducive to the emergence of a social compact.

4. The independent expert welcomes the efforts to end the crisis made by the countries known as the Friends of Haiti, the United Nations and the Organization of American States. He encourages them to continue their policy of cooperating with Haiti. He hopes that all Haitian political actors are aware of the threats to human rights implicit in any new crisis that might arise in Haiti. He appeals to their sense of responsibility and recommends that the political dialogue initiated with a view to ensuring the efficient operation of institutions, and thus guaranteeing the existence of a State ruled by law, will be continued and strengthened.

5. This report summarizes the findings of the independent expert's mission and the information he has received regularly from MICIVIH, the Haitian Government and certain NGOs. He takes this opportunity to thank all concerned for their valuable cooperation, without which he would have been unable to fulfil his mandate.

II. Combating impunity

6. By chance, the independent expert appeared before the Commission on Human Rights at its fifty-fifth session on the anniversary of the Raboteau massacre, which occurred on 22 April 1994. The commemoration by the Haitian people of the fifth anniversary of this tragedy provided an occasion for both the Government and the NGO community to renew their appeal for the return without delay of all the documents seized from the headquarters of the Haitian Armed Forces and of the Front pour l'avancement et le progrès Haitien (FRAPH), which are still being held by the American authorities. The independent expert has on many occasions emphasized the need for a final settlement of this case.

7. It will be recalled that these documents were seized by United States troops soon after their arrival in Port-au-Prince as part of the Multinational Force. The documents were transferred to the United States without the Haitian Government's knowledge or consent. Today, there is unanimous agreement that these documents, which include audio and video cassettes of torture sessions, together with photographs, will be a valuable source of information for the prosecution of those responsible for serious crimes committed during the *coup d'état* regime.

8. The argument put forward by the United States Government to justify its failure to return the documents, based on respect for the Privacy Act, 5U.S.C.552a, does not withstand analysis. The same is true of the argument based

on the Defense Intelligence Agency (DIA) Manual, section 58-13, concerning documents classified as United States military material. A widespread campaign for the return of the documents has been launched by Haitian organizations and has received substantial support in over 20 countries, especially European countries. In the United States, a letter from Human Rights Watch published in *The New York Times* described the documents as providing "some of the best evidence about the junta" and attributed Washington's refusal to give the documents back to the determination "to avoid revelations on its intelligence links to the junta".

9. Similarly, Amnesty International USA addressed a letter to Madeleine Albright supporting the position of the independent expert and calling for the return of the documents. The same position was taken by the Permanent Representative of Haiti to the United Nations at the fifty-fifth session of the Commission on Human Rights; he criticized the lack of any reference to the question in the resolution adopted by the Commission. Furthermore, the new Minister of Justice, Camille Leblanc, attaches priority to the question of the documents. He has linked the failure to return the documents to the absence of justice for the victims of the *coup d'état* and has drawn attention to the contradiction between the appeals of the United States concerning the trials of those accused of committing crimes against humanity in the former Yugoslavia and the lack of cooperation with regard to similar proceedings in Haiti. He implied that the United States might be concerned because the documents contain information regarding the possible implication of its citizens in human rights violations.

10. On 22 April 1999, MICIVIH issued a press release linking the question of the documents to the problem of impunity in Haiti. In the same month, the winner of the Nobel Peace Prize, Adolfo Pérez Esquivel of Argentina, visited Haiti and reiterated his firm support for the campaign for the return of the documents. One case which may be singled out is that of a former sergeant in the Haitian Army, Fritznel Jean-Baptiste, who was tried and sentenced for torture, kidnapping and attempted murder during the *coup d'état*. He allegedly stated that production of the documents could have proved his innocence. However, the jury did not believe him and he is currently serving a five-year prison term.

11. Despite many appeals from the independent expert and repeated requests from the Haitian authorities, supported by MICIVIH, members of the United States Congress, three Nobel Peace Prize winners, dozens of NGOs and thousands of people throughout the world, the Haitian people are still waiting for these documents, which form an essential part of their history. The independent expert recommends to the General Assembly that the United States should be invited to return the documents, intact and without delay. It may be noted that Haiti has already signed the Rome Statute of the International Criminal Court and that President Préval has stated he intends to ratify this important treaty.

III. The judicial system

12. Haiti is being affected more seriously than ever by the weakness of its judicial system. The process of reforming that system is progressing at a slow pace, meaning that it will be some time before the Haitian people get the judicial system they want. Regrettably, despite the efforts made at the penitentiary infrastructure level, detention conditions have improved very little, owing to a dysfunction of the criminal justice system. During his stay in Haiti, the independent expert observed multiple human rights violations throughout the judicial system, which is supposed to be the principal guarantor of such rights.

13. One need only cite the cases of illegal detention for debt or sorcery, failure to respect judicial procedures resulting from ignorance or corruption, failure to respect writs of habeas corpus issued by judges, especially in Port-au-Prince, and cases of arbitrary arrest and denial of justice. It is not surprising that out of a prison population of 1,568 in the National Penitentiary in Port-au-Prince as of 18 March 1999, only 210 (13 per cent) had been tried; the other 87 per cent, that is, 1,358 people, were being held in pre-trial detention. Most cases are affected by serious judicial irregularities.

14. According to statistics compiled by MICIVIH, in December 1998, 3,740 people were detained in Haitian prisons, of whom only 19 per cent had been tried. The independent expert was particularly shocked by the case of 11 adolescents who had been held in pre-trial detention since 1996. They were accused of having killed a foreigner, although there was no *corpus delicti*. In March 1997, an order was issued dismissing the criminal proceedings against them, but the Government commissioner opposed their release. In August 1998, an appeal court confirmed that they should be released, but the clerk of the court refused to draft the order unless the accused agreed to pay the costs. In November 1998, MICIVIH was informed that they would not be freed unless a rehabilitation centre could be found for them. They were finally released on 18 December 1998. This denial of justice is just as shocking as the case of a person detained in Anse-à-Veau since 1997, who was held in prison for 525 days before being heard by a judge and was then released for lack of evidence.

15. On 22 July 1999 the Deputy Executive Director of MICIVIH discussed with the Minister of Justice the case of 22 people who were detained in Port-au-Prince despite the fact that an order had been issued for their release. Nine of them had been held in pre-trial detention for over 1,000 days. The question of the preparations for the Raboteau massacre trial, including the contribution of additional international consultants by MICIVIH, was likewise discussed at this meeting.

16. On 27 July 1999, following the meeting between MICIVIH and the Minister of Justice, a discussion was held with all the judicial authorities taking part in the Raboteau massacre trial. The discussion focused essentially on the question of the criminal responsibility of those who were involved in the massacre without having participated directly in the executions.

17. Although the situation with regard to collective freedoms is satisfactory, potential threats to individual freedoms are a cause of concern. There are an increasing number of cases involving arbitrary and/or illegal detention, and many decisions calling for the release of detainees issued by the senior judge of the Port-au-Prince civil court are not implemented by the government commissioner (Government Procurator) for that jurisdiction. Writs of habeas corpus are therefore rendered meaningless. This situation is unsatisfactory and the Haitian authorities and the international community, especially the United Nations and MICIVIH, should make every effort to improve it.

18. It is nevertheless reassuring to note that certain judges are trying to speed up procedures in some towns, even if that does not increase the percentage of people brought to trial. It should also be pointed out that of 100 minors held in detention, only 10 have been tried. These problems, which are linked to the inefficient functioning of the criminal justice system, are compounded by the lack of human resources, the dilapidated state of the courts, and the lack of means of communication, electricity, vehicles and office supplies, and in some cases of codes of judicial procedure.

19. All parties, whether the President of the Republic, the Prime Minister, the Minister of Justice, the leaders of political parties, or the human rights NGOs, acknowledge that the weakness of the judicial system is one of the main concerns currently facing Haitian society. This situation further exacerbates the prevailing sense of impunity in the country. As the Prime Minister pointed out during his meeting with the independent expert, the problem of justice is bound up not only with corruption but also with the lack of appropriate training, the deficiencies of law schools in the provinces and the shortage of teachers.

20. In that connection, the independent expert encouraged the Prime Minister, with the assistance of the international community, to carry on with a project for the establishment of law schools in the North, South and Artibonite Departments which would also train teachers of administration and technology with a view to preparing the human resources essential for regional development.

21. The new Minister of Justice has resolutely begun improving the administration of justice while, at the same time, pointing out that real judicial reform cannot be instituted until legislative elections have been held. That view, which is shared by the independent expert, did not prevent the Minister from taking measures, albeit modest ones, which bear witness to his determination. For example, in accordance with the time-frame of the Ministry's plan of action, 11 vacant posts in the judiciary have been filled. Three government commissioners, eight registrars and two ushers have also been appointed.

22. Work has begun on organizing a mobile justice system whereby justice can be brought closer to those amenable to the jurisdiction of the courts. To that end, a government commissioner has been designated to travel to the island of Gônave in order to be more accessible and to expedite certain cases within his competence. That initiative is to be extended to other jurisdictions.

23. In earlier reports, the independent expert drew attention to the very low level of remuneration of judges and judicial offices. He therefore welcomes the new salary policy which has been studied and established by the Ministry in order to enhance the status of the judicial function. It is to be hoped that the 200 to 300 per cent increase in salaries will attract competent people to serve in the judicial sector.

24. The independent expert also commended the work done by a commission of inquiry established by the Minister the report of which served as a basis for the dismissal of members of the judiciary involved in acts of corruption and fraud within the judicial system.

25. In the context of preparations for the Raboteau massacre trial, the Minister of Justice arranged for a reenactment in early June of the events at Gonaïves, the scene of the massacre. For security reasons, the accused did not take part and their place was taken by policemen, but judicial sources have affirmed that the video recordings made during the reenactment would be shown to the accused and that their comments would also be recorded.

26. The independent expert also wishes to emphasize that the price to be paid for peace, democracy and development includes the construction of an independent judicial system

accessible to all. In that connection, he regrets the slow pace of the judicial reform process.

IV. The question of violence

27. The climate of insecurity that has prevailed for some time in Haiti is a matter of concern that has been emphasized both by NGOs and by the leaders of the opposition and the various United Nations agencies. In March 1999, the independent expert lamented the renewed upsurge of violence in Port-au-Prince and roundly condemned the assassination of Senator Jean-Yvon Toussaint. Some weeks earlier, the sister of President Préval had been seriously injured in an attack, and her driver killed. Another assassination was that of Father Jean, a priest well-known for his commitment to human rights. The independent expert therefore requested the Haitian authorities to spare no effort to have the perpetrators of those crimes swiftly arrested, prosecuted and tried in accordance with the relevant human rights standards.

28. Pierre Espérance, Director of the National Bureau of the Coalition nationale pour les droits des Haitiens (National Coalition for the Rights of Haitians) and a prominent defender of human rights, escaped death in an armed attack. He was shot in the shoulder and the knee. The independent expert visited him in the hospital and held discussions with his colleagues, who were still in a state of shock. The Minister of Justice informed the independent expert that an inquiry had been opened. Serge Alcindor, a lawyer at the Haitian bar, was likewise a victim of a serious attack at his home in which he was shot six times, four times in the head and twice in the stomach. Fortunately, no vital organ was affected, and the bullets had no traumatic after-effects. Mr. Alcindor is at present abroad. During his stay in Haiti, the independent expert had discussions with him in which he said that his life was being threatened. Speaking from abroad, he confirmed to the independent expert that politics had nothing to do with the plot which had almost cost him his life and that the authorities of the Republic were in no way responsible.

29. Far from decreasing, violence seems to have taken on a more worrying dimension. Last April, the acting spokesman for the Haitian National Police announced that, between 1 and 8 April, the National Police had recorded 20 assassinations and 12 cases of murder and attempted murder. During the same period, the Judicial Police recorded 86 acts of aggression, as compared with 34 in the previous week. The police also seized nine firearms. The spokesman also stated that 242 people had been questioned, 127 of them in the West Department where 55 per cent of the offences were committed.

30. One serious incident involving the assassination of a policeman on 9 April at Martissant (a suburb south of Port-au-Prince) deserves to be mentioned. It is alleged that some policemen who were members of the Compagnie d'Intervention Rapide et de Maintien d'Ordre (Rapid Intervention and Law Enforcement Unit) shot four young people who were at the scene of the crime in cold blood by way of reprisal. Although the spokesman for the Haitian National Police denied that the police were in any way responsible for the death of the four young people, the independent expert welcomed the announcement that an inquiry was to be opened to establish the truth.

31. On 28 May 1999, demonstrations were organized in Port-au-Prince by the Chamber of Commerce and Industry to protest against insecurity, political violence and anarchy. Other demonstrators, supporters of former President Aristide, were involved in violent clashes with the demonstrators. Immediately after the demonstrations ended, the Police carried out an operation in the Carrefour Feuilles district of the capital during which 11 people were killed. Several policemen were arrested after those incidents. The Police subsequently stated that the 11 victims belonged to armed gangs and had been killed in exchanges of fire with police. According to MICIVIH, however, 10 out of the 11 had gunshot wounds to the head and the eleventh a gunshot wound to the heart. A police commissioner involved in the killing who had fled to the Dominican Republic was arrested on 3 June and handed over to the Haitian authorities on 5 June 1999. He was relieved of his police responsibilities and detained at the National Penitentiary. Two other policemen were put in solitary confinement, thus bringing the number of policemen arrested to five. All of them have denied any personal participation in the killing.

32. One fundamental question that arises is whether this wave of assassinations, murders and attacks, which are also directed against prominent public figures in Haiti, is part of a pattern of general lawlessness or whether the crimes are politically motivated. The inquiries being conducted must be totally independent, impartial and thorough in order finally to shed light on the situation. It should also be noted that drug trafficking is on the increase in spite of the efforts made by Haitian National Police to combat narcotic drugs. The support of the international community is necessary in order to prevent a risk of destabilization caused by drug traffickers.

V. The Haitian National Police

33. The independent expert wishes to commend the efforts of the Director-General of the Haitian National Police which have, in the main, resulted in satisfactory police conduct with respect to human rights. The statistics compiled by MICIVIH nevertheless indicate a disturbing increase in allegations of police brutality and other forms of ill treatment during arrest or interrogation, which increased from 284 in 1997 to 423 in 1998. However, inquiries have been opened in most cases of alleged abuse, particularly the most serious ones. It should also be noted that penalties, which may include dismissal, are imposed by the police authorities. Between January and December 1998, the Director-General of the Haitian National Police dismissed 220 policemen, 35 of whom were involved in human rights violations.

34. For his part, the Inspector-General of the Haitian National Police criticized failures by senior police officers to penalize abuses or breaches of discipline committed by their subordinates. He therefore made proposals for the establishment of a more publicly accessible complaints system. Except in Port-au-Prince, victims are still in most cases reluctant to report police officers for fear of reprisals.

35. At the end of 1998, four policemen were in detention for human rights violations, three of them for torture and the fourth for a summary execution.

36. On 21 July 1999, MICIVIH issued a press release expressing its concern at allegations of police involvement in the activities of armed groups that were said to be responsible for at least 16 cases of murder and the disappearance of suspected gang members in May and June 1999 in the districts of Projet Drouillard and Bois Neuf and in Cité Soleil.

37. Unfortunately, the judicial system is so lax that many police officers escape justice by bribing the judges. In the medium term, this situation is likely to undermine the morale of those policemen who respect the rules in carrying out their task.

38. The independent expert strongly urges the continuation of the programme of the Haitian organization Fonds des droits humains entitled "*Police communautaire*" (community policing) which addresses relations between the police and the public. During his meeting with Mr. Dessables, President of Fonds des droits humains, the independent expert was greatly encouraged to note that the Director-General of the Police had expressed his support for the programme. It must be pointed out that the concept of "community policing" does not denote a police force separate from the Haitian National Police but implies irreproachable professional conduct by police officers, or by the police as an institution, with respect to the community or individual members of the public.

39. According to Mr. Dessables, community policing must be seen as a dynamic and participatory process designed to bring about a steady improvement in relations between the police and the population they serve, on the one hand, and between the population and the police, on the other. The police and the population must not feel that they belong to different camps, and still less that they are in a state of mutual hostility. In other words, action is needed to ensure that mistrust is replaced by confidence and that cooperation takes the place of hostility. In his first report, the independent expert stressed the importance of the role of the police in the community. He is convinced that the programme deserves the support of all those who are committed to harmonious relations between the Haitian population and the police, based on mutual respect and non-violence, in order to ensure security and peace for all.

VI. The post-MIPONUH era

40. The climate of insecurity, the corruption in both the judiciary and the police, the poor functioning of justice and the inadequate resources at the disposal of the Haitian National Police are all elements which must be taken into account in considering the question of the future of the United Nations Civilian Police Mission in Haiti (MIPONUH). It would appear that the Security Council has no intention of renewing the mandate of MIPONUH, which has at its disposal a contingent of 140 international armed police officers deployed throughout Haiti's nine provinces. There is no doubt that the presence of these officers has a genuine impact on the human rights situation. Apart from visiting detention centres, they also help to enhance the professionalism of the new Haitian National Police and to reassure the population.

41. While it is true that most political actors, whether in power or in opposition, do not believe that Haiti should enter the twenty-first century with a foreign armed presence, they nevertheless recognize the very reassuring role played by MIPONUH and the danger that would ensue on its final departure. For his part, the independent expert fears that the withdrawal of MIPONUH might create a vacuum that could be exploited by anti-democratic forces and other former military personnel. This fear would be dispelled if the mechanism for coordinating international assistance to the Haitian National Police could cope with the enormous

security problems looming on the horizon with the general elections scheduled to take place on 19 December 1999 (the first round) and 19 January 2000 (the second round).

42. While recognizing the genuine progress made in enhancing the professionalism of the Haitian National Police, which is under the authority of a Director-General who commands admiration, it should be noted that the National Police would never have been able to accomplish its mission without the constant support of MIPONUH. Certainly, it should not be forgotten that the Haitian National Police is still new and has only a limited number of about 6,000 men at its disposal. In psychological terms, the mere presence of MIPONUH has thus far helped to give the population a feeling of security and to provide a stabilizing factor.

43. During his stay in Haiti, the independent expert assessed the eminent role played by the United Nations Development Programme (UNDP) through its police project, which is run by a man possessing many excellent qualities and a keen political awareness. The efficiency of that project, however, should be judged by the yardstick of the presence of MIPONUH. With the eventual final departure of MIPONUH, there would be a number of problems to overcome, including the establishment of a communications system, the analysis and use of information gathered on the ground, and rapid transport logistic.

44. At the time of writing this report, the independent expert had not yet seen the report on MIPONUH which the Secretary-General was to submit to the Security Council in August 1999. That being so, and without prejudging the progress made in establishing a lasting support programme for the Haitian National Police, he wishes to emphasize once again the security aspect of the post-MIPONUH era.

45. The independent expert welcomes the fact that representatives of the diplomatic corps and other members of the international community in Haiti, including the Director of MICIVIH, have taken the initiative of meeting to discuss proposals concerning the establishment of an Economic and Social Council mission that would be active in the field of institution-building after the departure of MIPONUH and MICIVIH and the possibility of providing the Provisional Electoral Council with technical and financial assistance in connection with the forthcoming election.

VII. Technical cooperation programme

46. The independent expert wishes to mention the question of the technical cooperation agreement signed between the Haitian Government and the Office of the United Nations High Commissioner for Human Rights. The first phase of that agreement was implemented in 1995-1996. The second phase, which should have ended in June 1998, was not completed due to a unilateral decision taken by the Office of the High Commissioner in March 1998 to assign the project to MICIVIH. Neither the independent expert, nor the Haitian Minister of Justice, had been consulted beforehand. In the context of a withdrawal of MICIVIH, it seems essential to give some thought to the question of ensuring that the Office of the High Commissioner has a visible presence.

47. That presence is particularly desirable given the human rights situation in Haiti and the inadequacy of the human resources in the various ministerial departments. Support would be greatly appreciated in connection with the drafting of reports to be submitted to the bodies established pursuant to international human rights instruments and with the revision of the Code of Penal Procedure and the Penal Code.

48. The independent expert was consulted by the Coordinator of the Latin American and Caribbean Team of the Activities and Programmes Branch of the Office of the High Commissioner for Human Rights concerning methods of relaunching the technical cooperation programme. The independent expert was also consulted by the Deputy Executive Director of MICIVIH concerning the three activities planned in the context of the implementation of phase 2 of the technical cooperation agreement.

49. These were the organization of a human rights seminar for local NGOs and a seminar for civil servants and the provision of assistance to the Haitian Government in connection with the revision of the Penal Code. It should be noted that, for reasons relating in particular to the political situation, MICIVIH changed a number of the objectives set forth in the cooperation agreement, the reasons for which were provided by the Deputy Executive Director.

50. Initially, the technical assistance provided by the Office of the High Commissioner was to focus on a training programme for elected politicians and their representatives

with a view to enhancing their human rights skills. The current political context, however, is unfavourable, particularly since those elected will in all likelihood be disinclined to take part in such a seminar until the elections have been held and parliamentary commissions established. MICIVIH therefore suggested the alternative objective of organizing a training session for civil servants from the various ministries and Haitian political entities (the Ministries of Justice, the Interior, Women's Affairs and Foreign Affairs, the General Secretariat of the Senate and the Chamber of Deputies and the Office for the Protection of Citizens).

51. Members of the Preparatory Commission for the Reform of Law and Justice (CPRDJ), as well as judges and government procurators, will be invited to take part in this training, which is designed to enhance the skills of ministerial personnel and judicial officers, particularly with regard to human rights protection policies and techniques for preparing and submitting reports in the context of international human rights treaties.

52. Concerning the second component of cooperation, involving the revision of the Penal Code and the Code of Criminal Investigation, recommendations have been made to update both Codes in the light of the work of CPRDJ, which believed that revision of the Code of Criminal Investigation should take priority, followed by amendment of the Penal Code. MICIVIH consequently proposed that an international consultant should be recruited to assist CPRDJ in elaborating a draft for the Code of Penal Procedure.

53. With regard to the third component, the only amendment relates to the number of participants, which was reduced to 40, with the option of "training of instructors" rather than direct training for members of NGOs. This training is due to take place from 8 to 13 November 1999 and is intended to strengthen the institutional capacities of civil society as regards human rights protection in a democratic society. The independent expert is closely associated with the implementation of this component, particularly since he shares the MICIVIH approach of according absolute priority to strengthening the network of local NGOs engaged in protecting human rights, a priority which is all the more justified because, to the great regret of the independent expert, the mandate of MICIVIH could not be renewed.

54. On 28 May 1999, it was reported that MICIVIH would be losing its Organization of American States (OAS) component and that several regional offices would therefore have to be closed from 1 July 1999 owing to the financial constraints of OAS. OAS, together with United States and international NGOs, tried unsuccessfully to persuade the International Relations Committees of Congress, where there is a Republican majority, to release funds destined for MICIVIH. The Republicans Jesse Helms and Benjamin Gilman had previously declared that the funds should be allotted to Haitian human rights organizations instead.

55. On 16 June, MICIVIH issued a press release announcing the imminent closure of five of its nine regional offices, in Port-de-Paix, Fort Liberté, Hinche, Jacmel and Jérémie, as a consequence of the financial situation created by the departure of the OAS component. On 30 June 1999, all the OAS members of MICIVIH, apart from one, left the Mission following the withdrawal of that component.

56. The independent expert welcomed the decision of the Economic and Social Council, contained in its resolution 1998/4 of 7 May 1999, to create an Ad Hoc Advisory Group on Haiti that would submit recommendations to the Council on how to ensure that international community assistance to the efforts to support the Government of Haiti in achieving sustainable development is adequate, coherent, well coordinated and effective.

57. A delegation from the Ad Hoc Advisory Group visited Haiti from 27 to 30 June 1999. In their report (E/1999/103), issued in July 1999, the members of the Group recommended that the Council should invite the General Assembly to renew the mandate of MICIVIH, taking into account the need to review the mandate to reflect the challenges of the next two years.

58. On 27 July 1999, the Council adopted resolution 1999/11 on the long-term programme of support for Haiti, in which it recommended to the General Assembly to consider renewing the mandate of the Mission. However, following the proposal made by the Ad Hoc Advisory Group in that connection, the resolution recommended to the General Assembly to review all aspects of the mandate and MICIVIH operations in the light of the situation in Haiti.

VIII. Women's rights

59. The outstanding work done by women's organizations deserves commendation. In 1998, the independent expert referred to the session of the International Tribunal for the Elimination of Violence against Haitian Women, held in Port-au-Prince from 25 to 27 November 1997. This activity is beginning to bear fruit, as more and more victims of domestic violence are breaking their silence. Each month, for example, the Kay Famm organization sees an average of

20 women who come to it with complaints of ill-treatment and abuse.

60. The organization Solidarité ak Femmes d'Haiti reports that it has no further need to seek out testimony, as it is now approached by the victims themselves, who come to talk about the rapes to which they have been subjected. It is also reassuring to note that NGOs other than women's groups are beginning to take action to combat violence against women, as in the case of Justice et Paix des Gonaïves. Even more remarkable is the fact that, having been made aware of the issue, the Haitian National Police is committed to helping combat violence against women.

61. There is currently a group of 32 women's organizations which has held negotiations with Parliament (forty-sixth legislature) with a view to amending certain legal provisions deemed particularly unfavourable to women. The group has taken the view that in the present context it is easier to amend existing legislation than to draft new provisions. The negotiations with the members of Parliament, specifically with the Senate Commission on Health, Population, Family and Social Affairs and the Status of Women — have resulted in the formulation of three new legislative proposals to be submitted to Parliament.

62. These proposals relate to the decriminalization of abortion, rape as a crime against the person, recognition of domestic work and decriminalization of adultery. The Special Rapporteur on violence against women, Radhika Coomaraswamy, was at last able to undertake a mission to Haiti. Prior to her mission, she consulted the independent expert, who lent her his support. Her report will be submitted to the Commission on Human Rights at its next session.

IX. Rights of the child

63. The situation of *restaveks*, or children working as servants, is increasingly alarming. On average, these children are between 11 and 14 years old. They do all kinds of work for the host families without pay. Two years ago, they were estimated to number 200,000. A survey carried out for UNICEF by the Institut psycho-social de la famille (IPSOFA) suggests that today there are about 300,000. The survey stressed that living conditions for child servants are unsatisfactory, although one *restavek* out of four states that more or less adequate compensation is received for services rendered.

64. In a previous report the independent expert drew the attention of the international community to this distressing situation. The survey indicates that 77 per cent of such children reach 15, 16, or 17 years of age without ever having attended school; 55 per cent go to evening classes, 7 per cent go to a vocational school and 2 per cent attend a secondary school. The United States Government has decided to grant the Haitian Government an amount of $2 million to help to combat this practice, which dates from colonial times. At the very least this contribution will allow 10,000 children to be saved from domestic service and make it possible for them to receive an education and enjoy a life of freedom, in the words of the United States Secretary of Labor, Alexis M. Herman.

65. Access to education remains a major problem in Haiti; despite government action, over a million children between 6 and 11 years of age have no access to education. A basic education project is being formulated with the aim of promoting access to high quality basic education for children of both sexes, especially in rural areas and in underprivileged urban areas around Port-au-Prince.

66. The increase in education resources, although fairly modest in comparison with needs, has made it possible in the past year to refurbish over 55 national schools, build 15 high schools, refurbish 7 high schools and establish a programme to renovate 42 school buildings. During the same period, 4,500 disadvantaged children have received grants, 1,573,000 sets of school equipment have been given out, teaching materials and school supplies costing 44,640,850 gourdes have been distributed to pupils in the first two basic education cycles, and contracts for the manufacture of school furnishings totalling 32,848,129 gourdes have been concluded.

67. While it is a commonplace to say that young people are a country's future, there is a real risk that future generations will be handicapped because they did not enjoy the right to education. It must also be borne in mind that the strengthening of democracy depends on the level of education of the people. The independent expert has assured the NGOs and the Prime Minister of his willingness to echo their concern regarding shortcomings in the education sector. The Haitian Government is continuing its reform of the education system, undertaken by the Ministry for Education, Young People and Sports in the framework of the National Education and Training Plan. The reform focuses on two major issues: improved governance of the education system and a renewed emphasis on quality in education. Given the financial situation, success of the reform will depend on the level of support for the education sector provided by the international community.

X. Political situation

68. Haiti has been experiencing a serious political and institutional crisis for more than 20 months, causing concern among all those wishing to see democracy strengthened in the country. The independent expert has advised all the actors, thus contributing to the resolution of the crisis. At extremely difficult moments he has not hesitated to question each of them about their responsibilities. A Provisional Electoral Council is now in place, the candidate for the post of Prime Minister has been ratified, and his Government has already started work. The principal task is to prepare the organization of elections and to identify short- and medium-term priorities for the next Government.

69. The conflict between the Haitian Parliament and the executive has raised a very interesting legal problem in connection with which the Cour de cassation must take a decision regarding the action brought by Parliament concerning the unconstitutionality of article 158 of the Electoral Law of 14 February 1995. There is no doubt that the mandate of those elected in June 1995 legally expired on the second Monday of January 1999, as provided in the Electoral Decree of 14 February 1995. In other words, an institutional void has existed since 11 January 1999. The Head of State thereupon became the only organ empowered to act under article 136 of the 1987 Constitution. Should there have been prior consultation with the outgoing members of Parliament? Should the institutional void have been avoided by agreeing, in violation of the Law, that the members of Parliament should continue to sit until the next legislature had been installed?

70. The action brought by members of Parliament challenging the declaration by President Préval that their mandate had expired on 11 January 1999 was declared irreceivable by the Cour de cassation on 21 May 1999. It was the second action to be dismissed, the first having been rejected on 26 February 1999, owing in part to the view of the Cour de cassation that the case should have been previously heard by a lower court. The second action, concerning the cabinet decision compelling members of Parliament to surrender their official vehicles and firearms and freezing their salaries, was referred to the Cour de cassation after submission to the senior judge.

71. It should be recalled that in April 1999 the Organisation du peuple en lutte (OPL) again refused to take part in the consultations organized by the Provisional Electoral Council with a view to formulating a decree law on the organization of the next elections. In the view of Senator Yrvelt Chéry, an OPL leader, taking part in the talks would have amounted to backing what he termed "the *coup d'état* of 11 January against Parliament", referring to the decision by President Préval, who declared on 11 January 1999 that the mandate of the members of Parliament elected in the 1995 elections had expired. It should be made clear that OPL was part of a coalition of opposition political parties called the Espace de concertation. It withdrew on 6 March 1999, shortly before the conclusion of an agreement between the President and the Espace de concertation which made it possible to establish the Provisional Electoral Council and the Government of Prime Minister Alexis. At present matters seem to be back on track and OPL will no doubt participate in the elections.

72. On 20 July 1999 the Electoral Law was published in the Government gazette, *Le Moniteur*. The Law as published contains three significant changes to which the Provisional Electoral Council consented at the request of President Préval:

(a) No indication of the exact number of senators to be elected;

(b) Elimination of blank ballot papers (the subject of disagreement in the 1997 elections);

(c) Agreement to issue voter registration cards without photographs, should there be any difficulty in supplying photographs.

73. The Law also contained a change in wording that the Provisional Electoral Council did not accept: in the phrase specifying which senatorial posts were open for election, the text as published stated that the elections would "complete the election to (*compléter*) all posts of senator declared vacant de facto or *de jure*", whereas the Council said it had used the word "fill (*combler*)" instead of *compléter*.

74. It was subsequently reported that the error regarding the use of the word "*compléter*" instead of "*combler*" was attributable to the Provisional Electoral Council itself. A corrected version of the Electoral Law was to be published and ready for distribution on 27 or 28 July 1999. It should be made clear that even though the Electoral Law did not specify how many senators were to be elected, it authorized the Council to take a decision in that regard, and the Council decided that the number should be 19.

XI. Conclusion

75. In conclusion, the independent expert wishes to stress that Haiti has made progress towards building a democratic State with safeguards for individual freedoms. There have

been significant advances in human rights since the return to constitutional legality. Unfortunately, serious problems of governance, security and poverty remain as threats to the rule of law. The institutional deadlock over the past 20 months or so has seriously jeopardized the role of the State in improving living conditions for the people. The extreme poverty in Haiti is aggravated by natural disasters such as the high incidence of HIV/AIDS, estimated at 11 per cent in urban areas, 5.3 per cent in rural areas and 7.3 per cent nationwide. The question of the enjoyment of economic and social rights should therefore receive the full attention of the international community.

76. The independent expert calls on the Haitian authorities to make every effort to ensure that the perpetrators of the many crimes committed during and after the *coup d'état* are arrested, prosecuted and tried in accordance with the relevant human rights standards. Justice must be done to avoid the establishment of a permanent climate of suspicion, fostering the belief that violence is the only way out.

77. Today, more than ever, the greatest vigilance must be shown regarding respect for individual freedoms and the remedy of habeas corpus, and political actors, together with civil society, must reach agreement on the essential goal that unites them, namely the restoration of the full dignity of the Haitian people. In this context, the independent expert reaffirms his belief that the renewal of the mandate of MICIVIH is a necessity. In fact, without the determination of the MICIVIH authorities, the professionalism and commitment of its observers in the field, and the competence and sense of responsibility of its officials in Port-au-Prince, the human rights situation would not have improved, despite the good will of the Haitian Government.

78. The independent expert expresses the hope that all actors will help to create conditions that will allow the electoral process to continue without incident so that free, democratic and transparent elections can be held with the broadest possible participation by the Haitian people. In this connection, it is essential that the Provisional Electoral Council should strive to retain its credibility, objectivity and impartiality, in order that the elections may be held in accordance with the principles of democratic pluralism.

79. The independent expert encourages all the actors involved to pursue the political dialogue that they have already begun, but he cannot insist enough on the current priority: the holding of free, democratic and transparent elections, without which it will be impossible to ensure the institutional stability that is essential if the innumerable challenges facing the Government and people of Haiti are to be met.

80. Enhancement of the capacity of both government institutions and civil society, the promotion and protection of human rights, good governance and the sound administration of justice are challenges requiring particular attention in order that Haiti may enter the new millennium with the hope of ending, once and for all, the instability which has characterized it.

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Review of the efficiency of the administrative and financial functioning of the United Nations

Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Investigation into the field office in Lebanon of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

Note by the Secretary-General

1. Pursuant to General Assembly resolution 48/218 B of 29 July 1994, the Secretary-General has the honour to transmit herewith, for the attention of the Assembly, the report conveyed to him by the Under-Secretary-General for Internal Oversight Services on the investigation into the field office in Lebanon of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

2. The Secretary-General takes note of the findings and concurs with the recommendations set out in the report.

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Report of the Office of Internal Oversight Services on the investigation into the field office in Lebanon of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

Summary

Beginning in 1998, the Investigations Section of the Office of Internal Oversight Services reviewed a variety of allegations concerning the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), particularly its field office in Lebanon. These included allegations of financial impropriety committed by a finance officer in establishing an official United States dollar account with a commercial Lebanese bank and the embezzlement of a substantial amount of medical supplies by an unidentified person. Furthermore, numerous allegations of bribery by construction contractors of UNRWA officials and of subcontracting in breach of contractual arrangements were brought to the attention of the Office of Internal Oversight Services. These general and varied accusations of endemic corruption in the field office in Lebanon were also circulated in the local print media.

Early in the course of the investigation, the evidence adduced by the investigators disproved those allegations of financial impropriety by a finance officer and embezzlement of medical supplies. On the issue of alleged endemic corruption in construction procurement activities of UNRWA, the evidence that the Office of Internal Oversight Services gathered showed that these allegations were unsubstantiated as well. Consequently, and in order to safeguard UNRWA against such allegations in the future, the Office of Internal Oversight Services reviewed UNRWA tendering procedures from several angles, including transparency, in the request, acceptance and opening of bids, the role of local committees on contracts, the issues of subcontracting and of operationally independent audits. The Office of Internal Oversight Services issued recommendations for improvement in these areas in order to reduce proactively the risk of both fraud and public exposure to sweeping suspicion of corruption. In order to reduce the jeopardy to UNRWA financial interests, the Office of Internal Oversight Services also recommended that, apart from a reaffirmation of the existing UNRWA anti-bribery policy in writing, UNRWA should develop additional procedures by which staff members are required to report all cases of attempted bribery to management to facilitate an appropriate management response. Finally, the Office of Internal Oversight Services offered recommendations in respect of procedures by which complaints of malfeasance are accepted, administratively processed and reviewed in substance.

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I. Introduction

1. In response to a request from the Office of the Secretary-General and the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in September of 1998, the Investigations Section of the Office of Internal Oversight Services conducted two investigative exercises at UNRWA. These exercises were aimed at determining whether or not UNRWA, particularly its field office in Lebanon, was subject to endemic corruption, as alleged in an intense local media campaign which was attributed to charges by the former Director of the field office in Lebanon.

2. The first investigative exercise was an assessment performed at UNRWA which was designed to evaluate the merits of the allegations that had been raised both in the media and to the Office of Internal Oversight Services. In the course of the assessment, the Office of Internal Oversight Services received more than 30 additional complaints from UNRWA staff members and others.

3. At the conclusion of the assessment in October 1998, it was agreed between the Office of Internal Oversight Services and UNRWA management that a second investigative exercise (the investigation) would be conducted with the specific aim of determining whether or not the UNRWA construction programme in Lebanon had been targeted, as alleged, by specific acts of corruption. With a view to preventing any repetition of similar negative press and to assist UNRWA in preventing corrupt practices, the Office of Internal Oversight Services decided, as recommended in its assessment, to investigate not only the specific allegations but also the potential for corrupt practices within the operation of the construction programme at the field office in Lebanon.

4. The investigation was carried out in Lebanon between January and February of 1999 and revealed that the UNRWA construction programme in Lebanon was not endemically corrupt and the specific allegations presented to the Office of Internal Oversight Services were not substantiated as had been alleged in the local press and by others to the Office of Internal Oversight Services.

5. The investigators, in the course of the four-month review, examined the 30 specific allegations by traditional investigative methodologies, that is, they reviewed relevant documents, numbering more than 2,000; conducted more than 110 interviews, including UNRWA staff and contractors; made site inspections to the locations that had been reported as being the loci of construction malfeasance; and performed analyses of the bases for a number of the most serious allegations.

II. The assessment

6. As is common practice in assessments by the Office of Internal Oversight Services, investigators sought to determine whether any of the allegations made were bona fide. For two of the three primary allegations raised, both to the Office of Internal Oversight Services and in the media, investigators were able to determine that they were without merit, specifically the loss or overconsumption of medical supplies at the field office in Lebanon with a value of $1.5 million, and the allegedly improper opening of a dollar bank account for the field office in Lebanon.

A. Medical supplies

7. The Office of Internal Oversight Services received a report of an apparent loss of a substantial amount of medical supplies with an estimated value of $1.5 million in the field office in Lebanon. The evidence suggests that the allegation arose without any substantial basis to support it and was reported to the Office of Internal Oversight Services without sufficient enquiry to ascertain the facts. Indeed, it appears that the alleged deficit of $1.5 million, which exceeded the annual usage budget by 150 per cent, occurred on paper only as a result of computer programming problems complicated by data-entry errors.

B. Dollar bank account

8. It was alleged that a dollar bank account was opened improperly by the Field Finance Officer in a local bank. For a number of months, prior to the opening of the bank account, the Field Finance Officer and the treasurer at UNRWA headquarters (who was acting controller) had been engaged in extensive discussions on the steps to be taken for the resolution of certain payroll-related issues. As part of the measures they agreed to undertake, a dollar account was opened by the Field Finance Officer in a Lebanese bank. As such, the evidence does not support a finding of impropriety on the part of the Field Finance Officer, as the assertion that the opening of the account was *ultra vires* is not correct. The further claim that this action caused UNRWA to suffer a financial loss also was not substantiated.

C. Construction

9. Most of the allegations in the local media and received by the Office of Internal Oversight Services with respect to construction were in relation to the field office in Lebanon.

10. The assessment team was not able to resolve the specific allegations of corruption in the construction area during the brief assessment phase. For this reason, it was agreed with the Commissioner-General that the Office of Internal Oversight Services would return to the field office in Lebanon to resolve the specific allegations and examine the potential for corrupt practices in the operations of the field office's construction programme.

III. The investigation

11. It should be noted that, in the course of the assessment (see above), the Office of Internal Oversight Services received a number of specific allegations which ranged from particular acts by individuals to more general allegations of a non-transparent bidding process for construction projects. A number of the complainants also reported to the Office of Internal Oversight Services their concerns that the mechanism by which allegations of corruption were investigated in UNRWA was insufficiently transparent.

12. The investigation examined these allegations. The specific allegations against individuals were not substantiated by the weight of the evidence. In this regard, these allegations were found to have been based by those who made them largely on speculation, misunderstanding, limited and/or inaccurate information, hearsay and opinions. It is the view of the Office of Internal Oversight Services that to repeat such allegations in this report, with their details, given the dearth of evidence to support them, would serve no useful purpose.

13. In addition to advising UNRWA of specific issues for further review by management, the Office of Internal Oversight Services has identified areas for improvement in the operation of the field office's construction programme and has made recommendations to the programme managers which are designed to correct them. Additional recommendations for improving the management of corruption complaints were made which have Agency-wide applicability.

A. Areas for improvement

14. Based on both the assessment and the investigation, the Office of Internal Oversight Services has identified areas which, it considers, would benefit from actions and policies to further decrease the potential for construction corruption and, at the same time, decrease the concerns both within and outside UNRWA that the latter is alleged to have an insufficiently transparent system of managing complaints of corruption.

1. Bidding processes

15. The bidding processes currently followed in the field office in Lebanon do not sufficiently reduce the opportunities in the area to engage in corrupt acts as follows:

(a) The technical office, which is responsible for technical advice on construction projects, allows contractors who are awarded construction contracts to engage undisclosed subcontractors; owing to a variety of local factors, these firms may simply be using the name of the contractor and may also be the only one actually involved in the construction, but with whom UNRWA has no contractual relationship;

(b) The technical office can undertake pre-qualification of contractors but without defined procedures and criteria;

(c) The technical office can decide to disqualify contractors by discretionary means without identified criteria;

(d) The technical office engages in non-public bid openings;

(e) The Field Committee on Contracts, which is responsible for evaluating bids received and advising management thereon does not always have a fully informed discussion during its deliberative processes; while the Committee is not the decision-maker (that role falls to the Field Director, who takes advice from the Committee and the headquarters construction experts), its role in protecting the Agency by careful and expansive evaluation of the proposals submitted to it makes it an important anti-corruption factor.

16. The team of the Office of Internal Oversight Services held discussions with the Deputy Director of the field office in Lebanon on the issue of how to increase transparency in bidding procedures, which were established in 1996 but have since been occasionally modified. He acknowledged that, after three years of the field office's "open tender" process, there had been an initial increase in the number of

competitive bids, but there had been a "saturation point" which was followed by a decrease in the number of newcomers doing business with UNRWA. He diagnosed it as a result of the tender procedures, mainly related to the fact that the results of the tenders were not revealed to the unsuccessful bidders. Thus, an unsuccessful bidder who receives no feedback as to why his tender was unsuccessful may become discouraged from future bidding. In order to counteract this, the Deputy Director suggested that bid results be published. The Office of Internal Oversight Services regards this as a sound suggestion. Moreover, during this inquiry, the Office of Internal Oversight Services has had occasion to observe that bidders who have been disqualified or whose low bids have been rejected not only are not advised of the reason for the decision but also are often treated as disqualified thereafter. The reasons for such disqualifications become part of the technical office's institutional memory, which in turn tends to discredit the contractors' capacity to handle future contracts. UNRWA advises that this suggestion is one of the items under review by the headquarters committee on contracts.

17. UNRWA should introduce additional written policies and procedures for its bidding processes, notably for the selection and rejection of bidders. Written procedures which clearly define these processes will improve both accountability and transparency.

18. In its examination of a number of contracts before the Field Committee on Contracts and in interviews with past and present members, the Office of Internal Oversight Services has noted that the Committee is not always provided by the technical office with all of the relevant information. For example, qualification of bidders, reasons for disqualifying low bidders and the utilization of subcontractors are not always provided to the members of the Committee. For the Committee to operate as the contracting watchdog of the field office in Lebanon, it needs to have all relevant information and to engage in a full discussion and airing of views before making a recommendation to management.

2. Contractors

19. By testimonial evidence, some contractors have made regular and persistent attempts to bribe staff. In his interview, for example, the Deputy Field Technical Officer stated that contractors offered him bribes virtually every day which ranged from lunches to offers for him to name his price. These offers were related to the construction of classrooms in a camp school in 1998 and to the construction of a health centre. Although the Deputy Field Technical Officer stated that he had refused these offers, which were exclusively verbal and had been made outside the presence of witnesses, he acknowledged that he had not notified his supervisors of these attempts. Furthermore, a contractor who was not one of those referred to by the Deputy Field Technical Officer admitted to investigators from the Office of Internal Oversight Services that he had paid bribes for construction contracts, but he could offer no evidence or verifiable details in support of such payments. Additionally, the investigation also reviewed a case in which a contractor subjected the Agency to unethical practices. This firm, while an approved contractor for the field office in Lebanon, submitted a forged bank guarantee in connection with a construction project. The Agency responded by removing the firm from its list of approved contractors. Earlier, in 1995, the same contractor was found to have bribed staff members of the field office but, despite this fact, it was able to bid for contracts in return for disclosing those bribes. However, it continued its corrupt practices, with attempts to bribe staff again in 1998. In view of the firm's persistent involvement in undermining or attempting to undermine the integrity of the Agency staff and resorting to forgery in its business dealings with the field office in Lebanon, the field office's sanction of removing the firm from its list of approved contractors may be insufficient as a deterrent to other contractors. The Office of Internal Oversight Services was advised that the offence of forgery is a crime under Article 453 of the Penal Code of the host country.

20. These examples indicate the need for a strengthened mechanism to evaluate contractors with which the field office in Lebanon does business. Such evaluations of the performance of contractors is a common practice in construction programmes in a variety of national jurisdictions and may include issues related to the quality and reliability of the work as well as the integrity of the contracting firm.

3. Management of allegations of corruption

21. Rumours and allegations of corruption are common in the region. As allegations against government structures are a worldwide phenomenon, UNRWA, which provides food, shelter, health and education and other such services, is also similarly susceptible to allegations. UNRWA management has generally tried to review allegations of corruption reported to them. UNRWA utilizes boards of inquiry, its internal auditors and joint disciplinary committees as well as ad hoc panels to assess allegations received. The UNRWA Director of Operations has noted that the Agency receives a large number of allegations which managers have to evaluate. He stated that one of the ways to evaluate such

complaints used by UNRWA was to look at the credibility of the complainant. This was necessary, he said, because if management did not do so, they would have instituted numerous boards of inquiry.

22. However, UNRWA has no clear guidelines for operationalizing the boards of inquiry or other mechanisms of inquiry which set forth procedures, standards, membership or establishment of an evidentiary threshold. Apart from boards of inquiry, which are limited in experience and skills for addressing a complex matter, UNRWA does not have a formal mechanism with written procedures for addressing complaints in a uniform and systematic basis.

23. Complex allegations of corruption, by their very nature, are difficult to resolve even where there is an independent and experienced body to handle such complaints. Boards of inquiry are static in that they are created on an ad hoc basis to hear a particular case and make particular findings or recommendations but have no precedent-setting value or institutional memory. Even though UNRWA has been attempting by the various means listed above to address corruption reports, the lack of an oversight mechanism which provides a continuous and experienced anti-corruption force should be addressed. UNRWA may be better served and its donor States reassured if a permanent and operationally independent capacity for deterring, treating and addressing corruption were established.

24. One responsibility for such an independent function would be to determine the difference between complaints that are legitimately reported but found to be unsubstantiated from those that are the result of malicious or bad-faith reporting. It is essential to distinguish those who have made observations and have confused those observations with evidence from those who are operating mala fide.

25. Allegations of administrative misconduct or corrupt practices must be seen to be fully, professionally and independently investigated. The commitment of UNRWA management is essential in this regard. Individual allegations of corruption, even if found by investigation to be substantiated, will have a lesser impact on the Agency and its important work if UNRWA is seen to have, and does in fact have, an established mechanism to review, evaluate and resolve them. As the Office of Internal Oversight Services has noted the absence of endemic corruption in the construction programme at the field office in Lebanon, the recent establishment of written policies and procedures for investigating allegations should preclude individual cases from automatically giving rise to the perception of a more general corruption problem.

B. Complaints received by the Office of Internal Oversight Services

26. As mentioned earlier in the present report, the Office of Internal Oversight Services received a large number of complaints from Agency staff members and individuals outside the Agency. Some of those who came forward came in the belief that they were reporting a genuine complaint even though, in the majority of cases, they were often confused between what is necessary to ground a complaint in evidence and registering a concern. Others came forward as interested parties, but when their complaints were examined further, no evidence was found to initiate a counter-investigation to prove mala fide.

27. In addition, a number of the complaints were received from Agency staff, most of whom were not in management positions, or persons who have commercial contacts with the Agency. In this regard, it is important to stress that all those making specific allegations must do so with due regard for their impact and credibility. However, for those who made such reports to the Office of Internal Oversight Services and who had management responsibilities, there is an even greater access to facts and a concomitant obligation to ascertain sufficient information to make the report substantial, rather than rumour, and to report with greater regard for both the well-being and the public perception of the Organization. This is not to argue against proper reporting; on the contrary, it is rather to suggest that proper reporting institutionally and simultaneous leaks to the media are neither compatible acts nor responsible management. One senior manager who did so is no longer with the Agency.

IV. Recommendations

28. The Office of Internal Oversight Services has made the following recommendations to UNRWA:

Recommendation 1: Keeping in view the attempts by contractors to bribe the Agency's officials, the Agency should develop and enunciate a warning against bribery aimed at persons or commercial concerns desirous of doing business with it or having an ongoing contractual relationship. Furthermore, such policy clearly should spell out the adverse consequences of attempts to bribe. Such a policy should be communicated in writing with a frequency

and through a medium judged appropriate by the UNRWA management (such as tender documents, contracts and public notices in the Agency's premises) to communicate clearly the Agency's intention of not tolerating such practices (IV98/116/01);

Recommendation 2: The Agency should enunciate a policy which makes it incumbent upon staff members who have been approached by persons or business concerns with an offer of a bribe to inform their supervisors forthwith of such attempts and record such attempts in writing so that UNRWA management can take appropriate action (IV98/116/02);

Recommendation 3: The Agency must establish written policies and procedures for dealing with complaints with a view to ensuring that such allegations are inquired into impartially, expeditiously and transparently. Furthermore, records of such inquiries should be maintained in a format and for a time sufficient for the appeal period and for review to assess the patterns of problems identified. The Office of Internal Oversight Services will assist in the development and oversight of such policies and procedures (IV98/116/03);

Recommendation 4: The Commissioner-General should continue to pursue his programmes to reform and make more transparent the internal oversight and review processes of UNRWA by including in the mandate for the internal auditors a provision for operational independence in the audits they elect to conduct and by providing copies of the audit programme of work to the Under-Secretary-General for Internal Oversight Services, and such copies of audit reports as may be requested by the Office of Internal Oversight Services, as is done with other programmes (IV98/116/04);

Recommendation 5: Given the importance of the role of the Field Committee on Contracts, it is recommended that the Commissioner-General cause a directive or other writing to be issued publicly on the authority, responsibilities and independence of the Committee in reviewing and advising on the award of contracts to reaffirm its place in the anti-corruption policies of UNRWA (IV98/116/05);

Recommendation 6: The Agency should introduce into its procedures provisions aimed at increasing transparency in the process of pre-qualification and disqualification of contractors. Such efforts may include, for example, written communications to unsuccessful bidders of the price at which the Agency awarded a contract to a successful bidder (IV98/116/06);

Recommendation 7: Contractors' books of accounts for projects being undertaken by them for the Agency should be contractually required to be open for inspection by the Agency's auditors for a period deemed sufficient by the Agency to protect its interests (IV98/116/07);

Recommendation 8: Consistent with United Nations procurement rules, the Agency should introduce, with respect to subcontractors, policies that protect its interests by enabling the Agency to be in full possession of all the relevant facts about the existence, status and nature of subcontractors (IV98/116/08);

Recommendation 9: UNRWA management should undertake appropriate inquiries into contractors named as attempting to offer bribes (IV98/116/09);

Recommendation 10: Pursuant to legal advice received by the Office of Internal Oversight Services, the Agency should initiate appropriate action regarding the contractor that submitted the forged document in order to demonstrate its intolerance of unethical business practices (IV98/116/10).

V. Response of the management of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

29. *UNRWA is pleased to take note of the conclusions of the inquiry into the field office in Lebanon, namely, that allegations about the improper use of medical supplies and the opening of a dollar bank account were found to be without merit; that there was no evidence to support the allegations of endemic corruption at the field office in Lebanon; and that specific allegations against individual UNRWA staff members were not substantiated. At the same time, UNRWA recognizes that there are a number of action points for the Agency to consider and pursue. The responses of UNRWA to the recommendations of the Office of Internal Oversight Services are detailed below.*

Agency policy on attempted bribery and acceptance of gifts (recommendations 1 and 2)

30. *Recommendations accepted. It should be noted that the Agency's general conditions of contract already include a clause in which the contractor "warrants that no official of UNRWA has been or shall be admitted by the supplier to any*

direct or indirect benefit arising from the contract or the award thereof". In respect of the recommendation, the UNRWA Department of Legal Affairs, in consultation with field directors, the Chief of the Supply Division, the Head of the Technical Office and other relevant officials, are developing such a policy statement to further strengthen existing Agency contract procedures after a review of tendering rules, technical instructions and standard contract terms. The Agency will also develop appropriate mechanisms to implement such a policy, including, for example, the giving of undertakings by bidders. The policy and mechanisms to implement the policy will be introduced together with appropriate exposure through dissemination, publication and announcements.

31. *It is already Agency policy that staff should report offers of bribes etc. to their supervisors. Following the suggestion of the Office of Internal Oversight Services, a directive was circulated to all Agency staff in May 1999 reminding them of their obligations under the staff rules and Agency policy, including the requirement to notify supervisors immediately in writing of any attempt to offer staff any gift, gratuity, financial benefit or favour of any kind from any entity or individual doing or seeking to do business with the Agency. Supervisors are in turn required to report such matters to the administration so that appropriate follow-up action may be taken by the Agency. Disciplinary measures are available to the Agency under the staff rules should any staff member be in breach of this directive.*

Additional oversight mechanisms and related procedures (recommendation 3)

32. *Recommendation accepted. The UNRWA existing oversight mechanisms have over many years of practice been shown to be effective for the needs of UNRWA. The mechanisms at the disposal of UNRWA include: boards of inquiry; joint disciplinary committees; internal audit by UNRWA auditors; external audit by United Nations auditors; the Audit Committee (UNRWA oversight body); the Headquarters Committee on Contracts and the Field Committee on Contracts. Complaints are also reviewed on an ad hoc basis to determine credibility and the need for pursuit within the options noted above. These mechanisms have been used frequently and effectively to deal with allegations.*

33. *This does not mean that there is no room for improvement. In this context, it should be noted that, to supplement existing mechanisms, the Agency has adopted an additional mechanism for inquiring into and resolving complaints and allegations, as suggested in reports of the Office of Internal Oversight Services. A directive establishing a so-called "whistle-blowing" mechanism was issued in June 1999. This directive establishes procedures for the submission, receipt and consideration of allegations and complaints concerning the misappropriation of Agency assets, fraud or abuse of authority, whether initiated by UNRWA staff members or third parties. These procedures are designed to ensure that all such allegations and complaints received will be recorded, reviewed and processed in a judicious manner with confidentiality and timeliness. A senior official of the Agency has been designated by the Commissioner-General as the central point responsible for the coordination of all activities that may arise concerning the relevant investigations.*

Status of the UNRWA internal audit function (recommendation 4)

34. *Recommendation accepted. The UNRWA internal audit function sits outside the field/programme structure and reports directly to the Commissioner-General. There are no restrictions on the independence of its work. The annual programme of work and all audit reports are copied to the external auditors of the United Nations. The approved programme of work and copies of audit reports will be copied to the Office of Internal Oversight Services as requested, for information.*

Contract-awarding authorities (recommendation 5)

35. *Recommendation accepted. An in-house review of the authority, responsibility and independence of the field contracts committees is under way. This review will take into account both the report of the Office of Internal Oversight Services and a recent consultancy funded by the United Kingdom of Great Britain and Northern Ireland on the Agency's procurement function which highlighted the need to review the composition and functioning of the headquarters contracts committee and the field contracts committees.*

36. *The following background on the respective roles of the Headquarters Contracts Committee and Field Contracts Committees may be useful:*

(a) UNRWA organization directive No. 10 sets out the policy and framework procedures for the award of contracts. Under this directive, the authority to award

contracts is vested in the headquarters contracts committee, Agency officers and the field contracts committees, depending on the value and nature of the contract in question. The awarding authority must, in each case, "satisfy itself that the contract proposed has been examined and approved by the legal, financial and other officers as appropriate, that adequate tenders be requested, that, all other conditions being equal, the lowest price or bid be accepted and that the contract proposed is overall in accordance with the Agency's best interests".

(b) Within this framework, the role of the Field Contracts Committee will change depending on the value of the contract. Where the value of the contract is below $100,000, the Field Contracts Committee advises the Field Office Director whether to award the contract or not. Where the contract is in excess of $100,000, which is the case for the majority of UNRWA contracts, the Field Contracts Committee advises the Field Office Director to submit the contract, with recommendations, to the headquarters Contracts Committee for approval. The Field Contracts Committee does not itself approve or award contracts; ultimate responsibility for contracts is vested in the headquarters Contracts Committee and/or the Field Office Director, depending on the value of the contract.

The bidding process, including communication with bidders (recommendation 6)

37. *Recommendation 6 requires further consideration within UNRWA. UNRWA is re-examining its policy on procedures for pre-qualification, qualification and disclosure of information. The Agency is already involved in a review of its tendering and contracting procedures and has engaged specialist consultants with financial support from the Government of the United Kingdom. The consultants' report has been delivered, and its principal recommendations, together with those of the Office of Internal Oversight Services relating,* inter alia, *to increased transparency in the pre-qualification and disqualification of contractors, are being evaluated by an internal interdisciplinary process which will identify and address any shortcomings in established rules and procedures.*

38. *As far as disclosure of bid prices is concerned, the Agency is mindful of the need for balance between the legitimate goal of transparency in the Agency's procedures and the interest of the Agency and bidders in maintaining confidentiality. Disclosure of bid prices would be a breach of confidentiality and entails the risk of less competitive bidding for UNRWA tenders. Potential bidders may not bid if they know that price-sensitive information will be made publicly available. The Agency could, however, on a case-by-case basis and taking account of the market, consider if price-sensitive information can be publicly released. In sophisticated and highly developed international markets, increased information can lead to increased competition. However, in smaller local markets, such as those in the area of UNRWA operations, revealing prices can lead to collusion, price-fixing and reduced competition. UNRWA is willing, in appropriate cases, to publish in general terms the principal outcome in bidding exercises. This would normally be limited to the value of the winning bid and the name of the winning bidder. The release of this information could be productive in respect of construction contracts but of limited or no benefit in other procurement situations.*

39. *It should be noted that the procedures and policies applied in the field office in Lebanon are in use Agency-wide; they are not* sui generis. *Any changes resulting from the inquiry by the Office of Internal Oversight Services and the United Kingdom consultancy would therefore be introduced Agency-wide.*

Access to contractors' books of accounts (recommendation 7)

40. *Recommendation 7 requires further consideration within UNRWA. It is not standard auditing practice for contractors' books of accounts to be open for inspection. It is unlikely that a potential contractor would find such a contractual requirement acceptable and its introduction could easily limit the number of bidders, thereby reducing competition. An alternative would be to require any contractor to undertake to maintain all relevant information relating to the contract and/or project for a reasonable time after the completion of the project and to provide on demand such information relating to the contract as the Agency might reasonably require. In certain appropriate cases (for example, in cases involving cost reimbursement, shared cost arrangements or asset management), UNRWA could include a provision that contractors' books of accounts for an Agency project be open for inspection. However, in most of the procurement in which UNRWA is involved, such a provision is unlikely to be acceptable to potential bidders or to be of any benefit to the Agency; it could indeed be counter-productive. The opening of accounts per se will not reduce opportunities for malpractice and bribes. Contractors could easily keep duplicate sets of accounts which would not incriminate them. It is more likely that an*

instance of bribery will be detected when there is no provision in a contract. Furthermore, the requirement to open books of accounts will, in many cases, deter reputable companies from bidding as they would resist undue intrusion into their records, which they regard as confidential business documents.

Subcontracting (recommendation 8)

41. *Recommendation accepted. Standard UNRWA building contracts already require that the contractor may only subcontract after receiving the written consent of the Agency, and that the contractor remains fully responsible for any acts and omissions of subcontractors. There is no prohibition on subcontracting; it is not per se disadvantageous to the Agency. It is common practice in the region (and in many countries outside the region) for contractors to work on a managerial basis only and to hire labour and specialist subcontractors for the duration of the project only. Furthermore, the Agency reserves the right to appoint, and the contractor is obliged to accept, any subcontractor or supplier the Agency wishes to nominate. UNRWA has initiated action to ensure that a mechanism is in place so that subcontracting does not take place without the Agency's knowledge and approval. In particular, field technical officers have been reminded of the need to ensure that the standard contract provisions concerning subcontracting are properly enforced.*

Follow-up to allegations of attempted bribery (recommendation 9)

42. *Recommendation accepted. UNRWA will seek information from the contractors alleged to have attempted to bribe the Deputy Field Technical Officer.*

Follow-up to case of forgery (recommendation 10)

43. *Recommendation accepted. The Agency's Department of Legal Affairs is examining the issue and considering what further action is appropriate. Potential action being contemplated includes referral of the case to the judicial authorities (after taking into account possible adverse consequences, such as whether the Agency's privileges and immunities might be compromised) and/or reporting details of the forgery to professional and standard-setting institutions, financial institutions and other United Nations organizations.*

(*Signed*) Karl Th. **Paschke**
Under-Secretary-General
for Internal Oversight Services

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GENERAL AND COMPLETE DISARMAMENT
MACROECONOMIC POLICY QUESTIONS
SECTORAL POLICY QUESTIONS
SUSTAINABLE DEVELOPMENT AND INTERNATIONAL ECONOMIC COOPERATION
OPERATIONAL ACTIVITIES FOR DEVELOPMENT
CRIME PREVENTION AND CRIMINAL JUSTICE
INTERNATIONAL DRUG CONTROL
HUMAN RIGHTS QUESTIONS
MEASURES TO ELIMINATE INTERNATIONAL TERRORISM

SECURITY COUNCIL
Fifty-fourth year

Letter dated 17 September 1999 from the Permanent Representative of Kazakhstan to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the text of the Declaration on the Principles Guiding Relations among the States Members of the Conference on Interaction and Confidence-Building Measures in Asia, signed by the leadership of the Ministries of Foreign Affairs of Afghanistan, Azerbaijan, China, Egypt, India, Iran, Israel, Kazakhstan, Kyrgyzstan, Pakistan, Palestine, Russia, Tajikistan, Turkey and Uzbekistan (annex I), and the resolution of the Meeting of Ministers for Foreign Affairs of the Conference on Interaction and Confidence-Building Measures in Asia, held in Almaty on 14 September 1999 (annex II).

I should be grateful if you would have the present letter and its annexes circulated as a document of the General Assembly, under agenda items 76, 97, 98, 99, 101, 107, 108, 116 and 160, and of the Security Council.

(Signed) Akmaral Kh. ARYSTANBEKOVA
Ambassador, Permanent Representative of
the Republic of Kazakhstan to the United Nations

Annex I

DECLARATION ON THE PRINCIPLES GUIDING RELATIONS AMONG THE STATES MEMBERS OF THE CONFERENCE ON INTERACTION AND CONFIDENCE-BUILDING MEASURES IN ASIA, MADE IN ALMATY ON 14 SEPTEMBER 1999

The States members of the Conference on Interaction and Confidence-Building Measures in Asia,

Reaffirming their commitment to the purposes and principles of the Charter of the United Nations,

Considering the growing desire of their peoples to live in an atmosphere of peace, friendship, understanding, good neighbourliness and cooperation,

Reaffirming their objective of promoting better relations among themselves and of ensuring conditions in which their peoples can live in true and lasting peace free from any threat to their security,

Emphasizing the importance of conducting inter-State relations on the basis of the principle of sovereign equality as well as the Charter of the United Nations and international law,

Recognizing that the international legal basis for the activity of the Conference on Interaction and Confidence-Building Measures in Asia is the Charter of the United Nations and international law,

Respecting bilateral and multilateral agreements that are in conformity with principles and purposes of the Charter of the United Nations and norms of international law,

Considering that better understanding and closer relations among them in all fields in conformity with the purposes and principles of the Charter of the United Nations and the five principles of peaceful coexistence would be beneficial for the strengthening of peace, stability and security in Asia,

Giving due attention to the prevention of disputes and conflicts and to their peaceful settlement,

Reaffirming that the diversity of national characteristics, traditions, cultures and values of the Asian States is not a divisive but a valuable and mutually enriching factor in their relations,

Emphasizing the importance of tolerance in international relations and the significant role of dialogue as a means to reach understanding, remove threats to peace and strengthen interaction and exchange among civilizations,

Reaffirming their determination to explore, taking fully into account the individuality and diversity of their positions and views, the possibilities of combining their efforts to enhance confidence and cooperation in the interests

of stability and economic and social development in their region and the whole world,

Recognizing the importance of the indivisibility of security in Asia and expressing their resolve to intensify joint efforts in this direction with a view to opposing challenges and threats to peace, security and stability in Asia,

Emphasizing the importance of confidence-building measures, which contribute to safeguarding peace and enhancing security,

Recognizing the close link between peace, security and development in Asia and in the world as a whole and conscious of the need for each member State to make its contribution to the strengthening of world peace and security and to the promotion of fundamental rights, economic and social progress and the well-being of all peoples,

Realizing their responsibility for a peaceful and prosperous future for their people,

Reaffirming their commitment to achieve full, just and lasting relations of peace, openness, mutual confidence, security, stability and cooperation in Asia by eliminating tensions and seeking peaceful settlement of disputes,

Recognizing the importance of the global elimination of all weapons of mass destruction and of addressing effectively the destabilizing accumulation of conventional arms, as a means towards achieving comprehensive, lasting and stable peace in Asia,

Welcoming initiatives and arrangements aimed at strengthening peace, stability, security and cooperation in Asia,

Declare their determination to respect and put into practice in their relations with each other, irrespective of their political, economic or social systems as well as of their size, geographical location and level of economic development, the following principles, which are of fundamental significance and shall guide their relations:

I. SOVEREIGN EQUALITY AND RESPECT FOR THE RIGHTS INHERENT IN SOVEREIGNTY

Member States shall respect each State's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, territorial integrity, freedom and political independence. They shall also respect each State's right to freely choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and administrative regulations.

According to the framework of international law and in the spirit of this declaration, all member States have equal rights and duties. They shall respect

V. NON-INTERVENTION IN INTERNAL AFFAIRS

Member States shall refrain from any intervention in the internal affairs of another member State.

They shall accordingly refrain from any form of armed intervention or the threat of such an intervention against another member State.

They shall likewise in all circumstances refrain from any act of military or political, economic or any other form of interference as a means of resolving political problems between them, or aimed at subordinating to their own interests the exercise by another member State of the rights inherent in its sovereignty and thus at securing advantages of any kind.

Accordingly, member States shall refrain from direct or indirect assistance to terrorist activities in all their forms and subversive or other activities aimed at overthrowing the state system of another member State or undermining the sovereignty and territorial integrity of other member States.

They reiterate their determination to promote international and regional cooperation to counter and eradicate all sources of terrorism. In this respect they emphasize the importance of participation of all States in this cooperation.

Member States shall not support on the territory of another member State any separatist movements and entities, and, if such emerge, shall not establish political, economic and other kinds of relations with them, shall not allow the territories and communications of the member States to be used by the above-mentioned movements and entities and shall not render them any kind of economic, financial and other assistance. They reaffirm the right of people living under foreign occupation to self-determination in accordance with the Charter of the United Nations and international law.

VI. DISARMAMENT AND ARMS CONTROL

Member States emphasize that enhancement of security in Asia should be achieved through the cooperation of all States in the interest of peace, stability and prosperity in conformity with the purposes and principles of the Charter of the United Nations. A comprehensive, non-discriminatory and balanced approach towards international security should be adopted.

Member States reaffirm their commitment to the goal of achieving general and complete disarmament under effective control.

They recognize that disarmament, arms control and confidence-building measures are essential in achieving the goal of strengthening peace, security and stability in Asia and the whole world. They, therefore, shall endeavour to develop appropriate measures in these fields.

Member States pledge to support efforts for the global elimination of all weapons of mass destruction and therefore commit themselves to increased

cooperation for the prevention of proliferation of all such weapons, including nuclear weapons, which constitute a particular danger to international peace and security. Member States also emphasize the need to achieve a nuclear-weapon-free world at an early date.

They support the establishment of zones free of nuclear weapons and other weapons of mass destruction in Asia on the basis of arrangements freely arrived at among the States of the region concerned, in conformity with the provisions of the Final Document of the Tenth Special Session of the General Assembly, the first special session devoted to disarmament.

Member States reaffirm their belief in the need to ensure security at the lowest level of armament and military forces. They recognize the necessity to curb excessive and destabilizing accumulations of conventional armaments.

Member States emphasize that any bilateral or multilateral military arrangements should not be directed at any third party nor should they undermine or pose threats to the security of other States.

VII. ECONOMIC, SOCIAL AND CULTURAL COOPERATION

Member States shall enhance the process of political consultations and develop cooperation based on mutual interests in the economic, social, humanitarian, environmental, information, scientific and cultural spheres, with each member State making its contribution under conditions of full equality.

Member States affirm the inalienable right of all States to develop, achieve and make use of science and technology for peaceful purposes aimed at progress in economic, social and cultural fields.

Member States stress that trade and economic cooperation on an equal, mutually beneficial and non-discriminatory basis constitutes an essential element of their relations and is a means of the construction of a prosperous Asia. They shall endeavour to develop appropriate measures and policies to promote trade and economic cooperation, including, based on bilateral or multilateral agreements, providing the necessary transit, transport and communication facilities and contacts with regional economic organizations. They emphasize the importance of the realization of economic and cultural rights as well as the right to development.

Member States emphasize the need for enhancement of cooperation in social fields such as fighting drug trafficking, drug abuse and organized crime, the solution of refugee problems, health care and disaster relief.

Member States recognize the uniqueness and the diversity of the cultures of Asian peoples and the contribution they can make to overcoming past differences. They emphasize their determination to strive for the triumph of freedom and for the protection and promotion of their cultural and spiritual heritage in all its richness and diversity. They shall make special efforts to promote better mutual understanding and to enhance cultural exchanges and cooperation in the fields of education and tourism.

Member States shall pay attention to the creation of material, legal, political, economic and other guarantees that will facilitate conditions for peace, harmony, mutual understanding and stability in the geographical area of the Conference on Interaction and Confidence-Building Measures in Asia.

VIII. HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Member States, being committed to act in conformity with the purposes and principles of the Charter of the United Nations, reaffirm in this context their commitment to respect the human rights and fundamental freedoms of all individuals irrespective of their race, sex and religion. They believe that respect, protection and promotion of human rights and fundamental freedoms contribute to political and social stability and peace, to the enrichment of the cultural and spiritual heritage of society as a whole and to mutual understanding and friendly relations between their peoples.

Member States attach great importance to the principle of indivisibility of all human rights and in this context emphasize the significance of the realization of all aspects of this principle.

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Member States emphasize that in the process of the further development of their positions the present declaration may be complemented with new principles of international cooperation corresponding to the purposes and principles of the Charter of the United Nations.

Annex II

RESOLUTION OF THE MEETING OF MINISTERS FOR FOREIGN AFFAIRS OF THE CONFERENCE ON INTERACTION AND CONFIDENCE-BUILDING MEASURES IN ASIA, ADOPTED IN ALMATY ON 14 SEPTEMBER 1999

The Ministers for Foreign Affairs of the States members of the Conference on Interaction and Confidence-Building Measures in Asia, having met in Almaty on 14 September 1999,

1. Signed the Declaration on principles guiding relations among the States members of the Conference on Interaction and Confidence-building Measures in Asia;

2. Reaffirmed their support to the further development of the CICA process as a regional forum;

3. Agreed to continue working within the framework of the Special Working Group to prepare the CICA document to be signed by the Heads of State and Government;

4. Expressed their gratitude and deep appreciation to His Excellency Mr. Nursultan Nazarbaev, President of the Republic of Kazakhstan, the People and the Government of the Republic of Kazakhstan for the warm reception and hospitality as well as for the outstanding preparatory work and excellent organizational arrangements.